3-20-90
Vol. 55 No. 54

federal register

Tuesday
March 20, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

3-20-90
Vol. 55 No. 54
Pages 10223-10394

federal register

Tuesday
March 20, 1990

Briefings on How To Use the Federal Register
For information on briefings in Salt Lake City, UT, Washington, DC, and Boston, MA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 55 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

SALT LAKE CITY, UT

WHEN: March 29, at 9:00 a.m.
WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT.
RESERVATIONS: Call the Utah Department of Administrative Services, 801–538–3010.

WASHINGTON, DC

WHEN: March 29, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

BOSTON, MA

WHEN: April 16, at 9:00 a.m.
WHERE: Thomas P. O'Neill Federal Building Auditorium, 10 Causeway Street, Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617–565–8129

Contents

Federal Register

Vol. 55, No. 54

Tuesday, March 20, 1990

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
581 10223

12 CFR
Proposed Rules:
568 10247

13 CFR
115 10224

14 CFR
39 (2 documents) 10226–10228
71 (3 documents) 10232, 10233
75 10234

17 CFR
200 10234

19 CFR
Proposed Rules:
177 10249

21 CFR
175 10235
176 10236
801 10347

26 CFR
301 10236
602 10236

29 CFR
Proposed Rules:
1910 10250

32 CFR
516 10350

33 CFR
334 10237
Proposed Rules:
334 10253

34 CFR
673 10237

40 CFR
Proposed Rules:
372 10254

42 CFR
Proposed Rules:
483 10256

46 CFR
550 10238
580 10238
581 10238
Proposed Rules:
515 10259
525 10259
530 10259
560 10259
572 10259

47 CFR
73 (2 documents) 10243
Proposed Rules:
73 (2 documents) 10259, 10260

50 CFR
285 10244
675 10246
Proposed Rules:
227 10260

Rules and Regulations

Federal Register
Vol. 55, No. 54
Tuesday, March 20, 1990

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 581

Processing Garnishment Orders for Child Support and/or Alimony

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: This document amends the list of designated agents (Appendix A) that was published on January 16, 1990 (55 Federal Register 1354) by correcting the listings for the Army and Defense Nuclear Agency under the Department of Defense and the listings for the Internal Revenue Service and the Custom Service under the Department of the Treasury. Under the Department of Veterans Affairs, an introductory paragraph is added and the listing for Alaska is revised.

DATE: This amendment is effective on March 20, 1990.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, (202) 632–5090.

SUPPLEMENTARY INFORMATION: Subsequent to publication of the list of designated agents (Appendix A) on January 16, 1990, OPM was advised of the need for amendments to the list. This publication makes the necessary amendments.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited primarily to Federal employees.

List of Subjects in 5 CFR Part 581

Alimony, Child Welfare, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM amends 5 CFR part 581 as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

1. The authority citation for part 581 continues to read as follows:

Authority: 42 U.S.C. 659, 661–662; 15 U.S.C. 1673; 5 U.S.C. 8437; E.O. 12105.

2. Under Appendix A to Part 581, the section titled *I. Departments* is amended by revising the listings for the Army and the Defense Nuclear Agency under the Department of Defense, by revising the listings for the Internal Revenue Service and the Customs Service under the Department of Treasury, and by adding an introductory paragraph and revising the listing for Alaska under the Department of Veterans Affairs to read as follows:

Appendix A To Part 581—List of Agents Designated To Accept Legal Process

* * * * *

I. Departments

* * * * *

Department of Defense

Army

a. Civilian employees in Germany: Commander, 266th Theater Finance Corps, Attention: AEUCF–CPF, APO New York 09007–0137, 049–6221–57–8911, Autovon: 370–8911.

b. Nonappropriated fund civilian employees of the Army Post Exchanges: Army and Air Force Exchange Service, Attention: CM–G–RI, P.O. Box 650038, Dallas, TX 75265, (214) 780–2005 or (214) 780–3111.

c. All other Army personnel: Commander, Army Finance and Accounting Center, Attention: FINCL–G, Indianapolis, IN 46249–0160, (317) 542–2155.

* * * * *

Defense Nuclear Agency

1. For employees at Kirtland AFB, New Mexico: Commander, Air Force Accounting and Finance Center, Attention: JA, Denver, CO 80279–5000, (303) 370–7524.

2. For all other employees: General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398, (703) 325–7681.

* * * * *

Department of the Treasury

* * * * *

Internal Revenue Service

Assistant Chief Counsel, General, Legal Services, Suite 208, 370 L'Enfant Promenade, SW., Washington, DC 20024–2518, (202) 252–8000.

* * * * *

Customs Service

Assistant Chief Counsel, P.O. Box 68914, Indianapolis, IN 46268, (317) 298–1233

* * * * *

Department of Veterans Affairs (VA)

The fiscal officer at each Department of Veterans Affairs (VA) facility shall be the designated agent for VA employee obligors at that facility. When a facility at which an individual is employed does not have a fiscal officer, the address and telephone number listed is for the fiscal officer servicing such a facility. In those cases where VA service-connected benefits may be subject to garnishment, service of process, unless otherwise indicated below, should be made at the regional office nearest the veteran obligor's permanent residence.

* * * * *

Alaska

Fiscal Officer, Anchorage Regional Office and Outpatient Clinic, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250;

Juneau VA Office, Send to: Fiscal Officer, VA Regional Office, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250;

Sitka National Cemetery Area Office, Send to: Fiscal Officer, VA Regional Office, 235 East 8th Avenue, Anchorage, AK 99501, (907) 271–2250.

* * * * *

3. Under the section titled "II. AGENCIES" in Appendix A to part 581, the listing for the Office of Personnel Management is revised to read as follows:

II. Agencies

* * * * *

Office of Personnel Management

Payments to OPM employees: General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 632–5090.

Payments of retirement benefits under the Civil Service Retirement System and the Federal Employees Retirement System: Associate Director for Retirement and Insurance, Office of Personnel Management,

Allotment Section, P.O. Box 17, Washington, DC 20044, (202) 632–6188.

[FR Doc. 90–6258 Filed 3–19–90; 8:45 am]
BILLING CODE 6325–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

[Rev. 4, Amdt. 1]

RIN 3245–AB77

Surety Bond Guarantee

AGENCY: Small Business Administration ("SBA").

ACTION: Final rule.

SUMMARY: A regulation concerning surety bond guarantee which completely revised part 115, was published as an interim final rule on November 9, 1989 (54 FR 47166) and comments thereon were invited before January 8, 1990. These comments are discussed below and the resulting minor changes, and additional minor changes of a procedural nature, are set out. Otherwise the interim rule is adopted as final.

EFFECTIVE DATE: These regulations are effective March 20, 1990.

FOR FURTHER INFORMATION CONTACT: James W. Parker, Jr., Office of Surety Guarantees, (202) 653–2548.

SUPPLEMENTARY INFORMATION: Revision 4 was published as indicated above. The comments were generally supportive, but also contained some criticism.

One such comment questioned how the stated purpose of the Preferred Surety Bond Guarantee (PSB) program, to improve the access to bonding for small and disadvantaged concerns, can be met without additional funding. SBA's answer is that the new program is a pilot program, the success of which will presumably control its future funding.

Two comments were critical of the requirement that premium income of a PSB Surety from bonds guaranteed by a government, Federal, State or local, not exceed 25% of the total premium income of such Surety. Moreover, SBA's explanation that this requirement is designed to obtain experienced underwriting, was rejected. SBA nevertheless believes that a mixture of guaranteed and unguaranteed bonds will raise the quality of underwriting for guaranteed bonds and, in addition, facilitate the graduation of small concerns from the guaranteed bond market to the general market.

Two comments criticized that the setting up of any claim reserve, among other events, triggers the sequestration of the particular file, and thus disables the contractor from further bonding, even if the claim reserve is only nominal and routine and does not signal an expected loss. This is not so. SBA exercises its discretion, on recommendation by the Surety, whether or not to sequester a file (§ 115.34(a)).

Another comment criticized the use of the advisory rates of the Surety Association of America (SAA) as the standard of reasonableness for PSB Sureties. This standard resulted from one of the recommendations of SAA, quoted with approval in the Senate report on the legislation (S. Rep. 100–416. 100th Cong. 2d. Sess., p. 28).

A comment criticized the requirement that the guarantee application and underwriting review be submitted only by a person authorized to issue the bond in question. The reason for this requirement was that in many instances a bond guarantee would be requested by an agent for a bond which the underwriter was not willing to approve. In these cases, the work of SBA's underwriter in processing the request would be wasted. The commenter, however, pointed out that agents in the interest of time often submit guarantee requests to SBA at the same time as to their home office. SBA accepts this explanation and modifies this requirement, with the admonition that Sureties not submit questionable requests which will not be honored by the home office. If this liberalization causes SBA excessive loss of underwriting time, a reinstitution of this requirement will be considered (§ 115.30(b)).

Other comments restated objections raised against the prior revision, and have been discussed before (See 54 FR 47166).

SBA, on its own initiative, has made certain procedural changes to Revision 4. These changes, set forth below, for the most part implement a procedural modification to the PSB program, which now makes the time of bond approval the critical time for the PSB program, rather than the time of bond issuance, which remains so for the prior-approval program (subpart B). Other changes are clarifications of our intent.

In keeping with the switch to bond approval, a definition of "approval" has been added to § 115.11 and conforming changes have been made throughout. The reason for this change is the statutory intent permitted PSB Sureties latitude to follow their own procedures. Since PSB Sureties are required to restrict underwriting authority to their own employees (See § 115.10(d)(4)), while other sureties are not so restricted, the underwriter is the final authority of the PSB Surety, and his or her approval are the act of the Surety itself.

In addition, the mandatory denial of liability by SBA upon the happening of stated events (§ 115.64(b)) has been made discretionary with SBA. The reason for the change is to allow for the possibility of excusable errors and omissions, when SBA does not intend to apply the harsh remedy of denial.

A typographical error in § 115.62(b)(1) is being corrected.

A change to § 115.10(a) makes clear that a bond guarantee agreement is made exclusively for the benefit of SBA and the Surety, and does not confer any rights or benefits on any other party.

Another change, to the definition of "issuance" in § 115.11, removes the clause which suggested erroneously that this definition related only to bid bonds.

Another change, to § 115.60(b) restates the allocation of guarantee authority to make clear that approved bonds that are not issued need not be debited to the allocation. Unused authority may be carried forward from one quarter to the next succeeding quarter. It should be noted, however, that such unused authority cannot be carried forward from one fiscal year to the next, because SBA's authority lapses with the fiscal year.

An amendment to § 115.60 *Procedures for PSB* reflects an agreement which will be signed by the PSB sureties and SBA. That agreement contains a schedule of the information to be transmitted by Surety to SBA, and the time frame for such transmissions. As the requirements of PSB Sureties and SBA may change from time to time, a specification of information requirements by regulation is not practical, and has therefore been eliminated. The amendment also makes allowance for electronic transmission of information for which no provision had been made. A conforming amendment is made to § 115.64(c)(11).

Finally, we have removed the notice period in § 115.62(d) which delayed the effect of a suspension action of SBA by 30 days. This provision was contrary to the legislative history which made plain that SBA should have the power of immediate suspension, pending a hearing, if a surety ceased to qualify for PSB status (*S. Rep., Supra*, p. 25).

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act

For purposes of Executive Order 12291, SBA has determined that these rules are major since they restructure a

program with a program level of $1.25 billion.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 604, SBA has determined that these rules will have a significant economic impact on a substantial number of small entities.

The following analysis is provided within the context of the review required under Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C. 603):

These rules are necessary to implement the Preferred Surety Bond Guarantee Program Act of 1988, Pub. L. 100–590, Title II approved November 3, 1988 (102 Stat. 3007). This Act created within SBA's existing Surety Bond Guarantee program a pilot program under which SBA may authorize selected sureties "without further administration approval, to issue, monitor, and service such bonds subject to the Administration's guarantee."

It is therefore necessary to set forth how such sureties will be selected to issue SBA guarantees on SBA's behalf without prior SBA approval, how they would operate to meet SBA's requirement under the statute and the regulations, how SBA would regulate, audit and, if necessary, terminate the PSB status of such sureties. At the same time, it is necessary to restructure the existing regulatory system to accommodate a two-track surety bond guarantee program.

We believe that the new statute and these regulations will result in lower bonding costs and better availability of bonds for small concerns, because the expected entry into the SBG program of major industry members with their wide organizational network, at premiums which do not exceed the Surety Association of America's advisory rates, will make more bonds at lower cost available to the small business market.

SBA is not aware of any suitable alternatives to the rules here set forth.

SBA certifies that these rules do not warrant the preparation of a Federal Assessment in accordance with Executive Order 12612.

There are no reporting, recordkeeping and other compliance requirements not approved by the Office of Management and Budget which would come under the Paperwork Reduction Act, 44 U.S.C. ch. 35.

There are no federal rules which duplicate, overlap or conflict with these rules.

The legal authority for these rule changes is section 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6), section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c), and section 411(d) of that Act, 15 U.S.C. 694b(d).

List of Subjects in 13 CFR Part 115

Small business, Surety bonds.

Accordingly, the interim rule amending 13 CFR Part 115 which was published at 54 FR 47166 on November 9, 1989 is adopted as the final rule with the following changes:

PART 115—SURETY BOND GUARANTEE

1. The authority citation for part 115 continues to read as follows:

Authority: Title IV, part B of the Small Business Investment Act of 1958, as amended (15 U.S.C. 687b, 694a, 694b), the Inspector General Act of 1978 (5 U.S.C. App. 1) and Pub. L. 100–590, Title II.

2. Section 115.10(a) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 115.10 Policy.

(a) *Congressional intent.* * * * Any guarantee agreement under this part is made exclusively for the benefit of SBA and the Surety, and does not confer any rights or benefits on any other party, such as any right of action against SBA. In the event of a surety's insolvency, SBA shall not be liable on its guarantee except for any loss, as defined in § 115.11, incurred and actually paid by such surety under bonds guaranteed by SBA.

* * * * *

§ 115.10 [Amended]

3. Section 115.10 *Policy* is further amended by removing in paragraph (b) *Types of bonds* the word "issued" and adding the words "issued or approved" therefor.

4. Section 115.10 *Policy* is further amended by removing in paragraph (g)(1) from the first sentence the word "issued" and adding "issued or approved" therefor, and removing from the second sentence the word "issuance" both times that it appears, and adding "issuance or approval, as the case may be" therefor.

5. Section 115.10 *Policy* is further amended by removing from the introductory text of paragraph (g)(3) the word "issued" and adding therefor "issued or approved, as the case may be."

6. Section 115.11 *Definitions* is amended by adding after the definition of "Ancillary bond" a new definition for "Approval" to read as follows:

§ 115.11 Definitions.

* * * * *

Approval or *approved* with respect to a bond or bonds means the approval by an employee of a PSB Surety, authorized to approve the bond or bonds in question.

* * * * *

7. Section 115.11 is further amended by revising the definition of "Issuance" to read as follows:

§ 115.11 Definitions.

* * * * *

Issuance or *issued* means the release of the SBA-guaranteed executed bond by the surety which binds surety to the contract.

* * * * *

§ 115.30 [Amended]

8. In § 115.30(b) the words and period "to issue the bond applied for." are removed from the seventh sentence thereof, and a period placed after "in writing".

§ 115.60 [Amended]

9. Section 115.60(b) *Allocation of guarantee authority* is revised to read as follows:

* * * * *

(b) *Allotment of guarantee authority.* SBA shall allot to each PSB Surety a periodic maximum guarantee authority. No SBA guarantee shall attach to bonds approved by a PSB Surety if such bonds are approved within a given allotment period in excess of the allotted authority for such period and no reliance on future authority shall be permitted. A PSB surety's allotment shall be increased only by prior written permission of SBA. The appropriate percentage of the penal sum of guaranteed bid bonds shall count against the allotment until the applicable contract has been awarded, the bid withdrawn or the bid bond has expired (See definition in § 115.11). The release of final bonds upon completion of the contract shall not restore such periodic allotment, but the appropriate percentage of the penal sum of an approved final bond that will not be issued may be credited to such allotment. In that event Surety shall notify SBA as soon as possible, but in no event later than five business days after such non-issuance has been determined. Surety shall not rely on such credit until it has notified SBA in accordance with the preceding sentence. Similarly, a PSB Surety's allotment shall be debited for increases, and credited for decreases in the contract and/or bond amount.

10. Section 115.60(c)(1) *Operations* is amended by removing from the second sentence the words "date of issuance" within the parenthesis and adding the words "date and time of approval" therefor, and paragraph (c)(4) is revised to read as follows:

§ 115.60 Procedures for PSB.

* * * * *

(c) *Operations* * * *

(4) A PSB surety shall advise SBA by electronic transmission or monthly bordereau, as agreed between Surety and SBA, of all bid bonds approved and of the approval of final bonds or the surety's approval of increases and decreases in the bond liability. SBA, in its discretion, may deny liability with respect to final bonds for which SBA has not received timely notice as agreed between Surety and SBA, by electronic transmission or on the monthly bordereau for the month in which the bond was approved or the liability increase was approved by the PSB surety, as the case may be. The notice shall contain the information specified from time to time in an agreement between surety and SBA.

* * * * *

§ 115.62 [Amended]

11. Section 115.62(b)(1) is amended by removing from the first sentence the word "dined" and adding "denied" therefor.

12. Section 115.62(d) *Suspension and termination of preferred status* is amended by adding in the first sentence after the first time "suspension" appears, the words and the period "and the effective date." and removing ", at least 30 calendar days prior to the effective date of the suspension."

13. Section 115.64(b) *Grounds for denial of indemnification* is revised to read as follows:

§ 115.64 Liability of SBA.

* * * * *

(b) *Grounds for denial of indemnification.* SBA may deny liability to a PSB surety if:

(1) The total contract amount at the time of approval of the bond or bonds exceeds $1,250,000, whether or not the liability under the bond(s) exceeds that amount;

(2) The principal on the bonded contract is not a small business, as defined in part 121 of this chapter;

(3) The bond is not required under the bid solicitation or the contract;

(4) The SBA guarantee of the bond has been obtained, or the surety has applied for indemnification against losses, by fraud or material misrepresentation, as these terms are defined in § 115.13;

(5) The bond was not eligible for guarantee by SBA because the bonded contract did not comply with the definition of contract in § 115.11;

(6) The loss occurred under a bond that was not guaranteed by SBA;

(7) The loss incurred by the PSB Surety does not fall within the definition of eligible "loss" in § 115.11;

(8) The loss incurred by the PSB Surety occurred under a final bond for which the check(s) for the contractor's guarantee fee had not been received with the related bordereau(x) by SBA;

(9) The PSB surety's guaranteed bond was approved without SBA's consent after work under the contract had begun, as defined in § 115.10(g);

(10) The PSB surety's guaranteed bond was issued in an amount which, together with all other such bonds, exceeded the allotment for the period during which such bond was approved and no prior SBA approval had been obtained;

(11) The bond under which the PSB Surety incurred a loss was not listed on the bordereau for the period during which it was approved;

(12) The PSB Surety's loss did not result from the principal's breach of the contract for which the guaranteed payment or performance bond were approved;

(13) The loss incurred by the PSB Surety under an ancillary bond is not attributable to the particular contract for which SBA-guaranteed payment or performance bonds were approved.

Dated: March 5, 1990.

Katherine M. Bulow,

Deputy Administrator.

[FR Doc. 90-6259 Filed 3-19-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-11-AD; Amdt. 39-6546]

Airworthiness Directives; S.E.L.A. Laboratoire Abadie (SELA) Fluorescent Lighting System Components

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to S.E.L.A. Laboratoire Abadie (SELA) Fluorescent Lighting System Components which requires inspection for, and remedy of, improperly installed or damaged SELA lamp connector assemblies and replacement of certain damaged SELA TR remote power units installed in aircraft. High voltage arcing, overheating, and burning have occurred on these components. The actions specified herein will prevent smoke, fire, electromagnetic interference (EMI), or electrical shock from occurring in the airplane.

EFFECTIVE DATES: April 9, 1990.

Compliance: As prescribed in the body of the AD.

ADDRESSES: SELA Technical Data Sheet REF 90/11980, dated February 9, 1990, and SELA "How To" Number 1 manual, dated May 10, 1980, applicable to this AD may be obtained from S.E.L.A. Laboratoire Abadie, BP No. 1 65500, Vic En Bigorre, France; Telephone (33) 62.96.71.56; Facsimile (33) 62.96.23.09, or Bigorre Aerospace Corporation (BAC), Suite 1107, 6543-46th Street North, Pinellas Park, Florida 34665; Telephone (813) 525-8115; Facsimile (813) 522-5820. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne E. Gaulzetti, Aircraft Certification Staff, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.05.34; or Mr. John P. Dow, Sr., Small Airplane Directorate, Airplane Certification Service, FAA, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: Numerous incidents of smoke and fire have been reported on aircraft using SELA fluorescent lighting system components caused by arcing or overheating of the lamp connector, or the remote power unit (RPU) output wires. During normal operation, potentials of 200 volts exist in the lamp circuits but during the lamp start cycle, or when electrical contact is intermittent, or when a lamp fails, potentials may exceed 2,250 volts to ground or 4,500 volts between output wires. Arcing may occur internally in the connector, to ground, or to other wires if the lamp connector is not properly installed, is damaged, or the contact fitting is not in intimate contact with the lamp end. The high voltage arc quickly overheats the components to temperatures where smoke and fire occur. As a result, the FAA and the manufacturer have developed procedures to inspect the connectors and remedy improper connections. The manufacturer has developed a new lamp connector scheme and a remote power unit (RPU) incorporating a high voltage monitor circuit which will shut off the high voltage output after several seconds of

continuous high voltage. These devices are presently under evaluation by the FAA and may be incorporated in subsequent action.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring inspection, repair, or replacement of components on SELA fluorescent lighting system equipped airplanes. The compliance time for the inspection action of this AD was established by the time that the airline operators would be able to inspect and remedy defects within their fleet. The requirement to replace failed or failing bulbs was established to minimize one likely failure condition resulting in extended periods of high voltage. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

S.E.L.A. Laboratoire Abadie (SELA): Applies to fluorescent lighting lamp connectors, Part Number (P/N) 3185–1A, and Remote Power Units (RPU), P/Ns TR 992, TR 992A, TR 992–1, TR 992–3, TR 992–4, and TR 992–5, installed in, but not limited to AMD–BA Model Falcons 10, 20, 50, 900, BAe Model Jetstream 3101, Beech Model 2000, CASA 235, Embraer, Piper PA–42, and SAAB–Scania Model SF 340A airplanes certificated in any category.

Note 1: SELA and Aerospace Lighting Corporation (ALC) components have similar size, shape, color and part numbers. They may be identified by trademark. The SELA RPU can be identified by a starburst pattern incorporating the text "laboratoire, abadie, France". The ALC RPU can be identified by a stylized ALC logo with "Aerospace Lighting Corp" in smaller print beneath the logo. The ALC lamp connector has "ALC" molded into the body of the conical piece of the connector. The SELA lamp connector is only stamped in yellow ink. The ALC lamp can be positively identified by the presence of a small hole in the locking channel of each blue plastic end piece.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent smoke, fire, and possible electrical shock, or electromagnetic interference to flight critical or essential systems, accomplish the following:

(a) Within the next 5 calendar days after the effective date of this AD, and thereafter until the actions described in paragraph (b) of this AD are accomplished, prior to each takeoff in conditions where cabin fluorescent lights are used, visually check the cabin fluorescent lighting, and remedy as follows:

(1) Replace all failed lamps prior to further flight.

(2) Replace all failing lamps which are noticeably darker than adjacent lamps within the next 10 hours time-in-service after the lamp condition is found.

(b) Within the next 90 calendar days after the effective date of this AD, visually inspect all cabin fluorescent lighting system components, and prior to further flight remedy all defects found following the instructions in this AD.

Note 2: The aircraft manufacturer's maintenance manual, the installer's maintenance manual, other service information, SELA Technical Data Sheet (TDS) REF 90/11980, dated February 9, 1990, or SELA "How To" Number 1 manual, dated May 10, 1989, may have supplemental information to the instructions described in this AD.

(1) Insure that the aircraft manufacturer's instructions regarding electrical safety precautions are followed.

Note 3: Hazardous voltages may exist in the fluorescent lighting system.

(2) Visually inspect all installed SELA RPUs (P/Ns) TR 992, TR 992A, TR 992–1, TR 992–3, TR 992–4, and TR 992–5) wiring harnesses:

(i) If charred, burned, or peeling insulation on wires is found, replace the RPU. Do not replace high voltage wires.

(ii) Remove and discard any foil insulation installed around the RPU.

(iii) Remove all typwraps where wires may be bundled together and inspect the wire insulation for crimps, kinks, or abrasion. Replace the RPU if the insulation is damaged. Do not fold the wire harness against itself.

(iv) Insure that the wire insulation is protected from abrasion against the aircraft structure by use of grommets, standoffs, or similar items.

(v) Measure the length of the output wires from the RPU termination to the lamp connectors. Insure that each high voltage wire does not exceed 78 inches (2M) in length. If the wire exceeds 78 inches, cut the lamp connector end of the wire and install a new fitting (P/N 3185–5) by stripping between 0.12 inch (3mm), and 0.20 inch (5mm) of insulation from the end of the wire and crimping the fitting onto the wire with Deutsch crimping pliers P/N 15500 and SELA positioner P/N 3185–8 in place of Deutsch positioner 20 MS (red). Do not solder the wire into the fitting.

(3) Replace any non-SELA lamps or lamp connector assemblies or lamp clips with SELA components. Do not intermix parts (including lamps) from different manufacturers.

(4) Visually inspect all lamp connector assemblies and for each such assembly:

(i) Replace all burned, melted, cracked, or incorrectly installed lamp connectors, (SELA TDS REF 90/11980 dated February 9, 1990, provides installation criteria).

(ii) Insure that the lamp connector spring (P/N 3185–22) is free to move within the connector, is unbroken and undamaged, and the wire does not bind within the connector. After the lamp connector is correctly installed on the lamp, the spring will not move freely.

(iii) Insure that the contact fitting (P/N 3185–5) is properly crimped and is not soldered onto the wire.

(iv) Insure that the contact fitting is installed flush over the end of the lamp contact with no more than a 0.04 inch (1mm) gap between the mating ends.

(v) Insure that the lamp connector body (P/N 3185–7) is installed first over the lamp until it "clicks" into position. Slide the locking sleeve (P/N 3185–15) over the connector body. Do not slide the locking sleeve onto the connector before installation on the lamp.

(vi) Insure that there are no bare wires or stray wire strands at the end of the connector after assembly.

Note 4: Potentials of 4,500 volts may exist between adjacent output wires and hasten the formation of arcing damage.

(5) Insert the lamp into no more than 2 clips insuring a snug fit. Insure that lamp clips are screwed and not adhesively bonded to the airplane structure. Reposition any lamps that contact this structure.

(c) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) The visual check only, required by paragraph (a) of this AD, may be accomplished by a certificated flightcrew member.

Note 5: When the checks required by paragraph (a) of this AD are accomplished by a flightcrew member pursuant to the restrictions specified in paragraph (d) of this AD, maintenance records must be made as required by FAR 43.9 and those records must be maintained as required by FAR 91.173, 121.380, or 135.439 as applicable.

(e) An alternate method of compliance or adjustment of the compliance times which provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium.

Note 6: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to S.E.L.A. Laboratoire Abadie, BP No. 1 65500, Vic En Bigorre, France; Telephone (33) 62.96.71.56; Facsimile (33) 62.96.23.09, or Bigorre Aerospace Corporation (BAC), Suite 1107, 6543-46th Street North, Pinellas Park, Florida 34665; Telephone (813) 525-8115; Facsimile (813) 522-5820; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on April 9, 1990.

Issued in Kansas City, Missouri, on March 12, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 90-6313 Filed 3-19-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-ASW-41; Amdt. 39-6540]

Airworthiness Directives; Schweizer Aircraft Corporation (Hughes Helicopter, Inc.) Model 269 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting an airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Schweizer Aircraft Corporation (Hughes Helicopters, Inc.) Model 269 series helicopters by individual letters. The AD requires the immediate installation of rivets to reinforce the attachment of the tail rotor blade leading edge abrasion strip to the body of certain tail rotor blades. This AD also requires, thereafter, a daily check of these tail rotor blades to detect debonding of the abrasion strip. This AD was prompted by reports of debonding at very low operating times which could result in the possible loss of the tail rotor and subsequent loss of the helicopter.

DATES: Effective April 9, 1990, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 89-20-03, issued September 28, 1989, which contained this amendment.

ADDRESSES: The applicable service information may be obtained from Schweizer Aircraft Corp., P.O. Box 147, Elmira, NY 14902. This information may be examined in the Regional Rules Docket. Office of the Assistant Chief Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Building 3B, Room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Chrastil, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe Branch, ANE-172, New England Region, 181 South Franklin Avenue, Valley Stream, NY 11581, (516) 791-6220.

SUPPLEMENTARY INFORMATION: On September 28, 1989, Priority Letter AD 89-20-03 was issued and made effective immediately as to all known U.S. owners and operators of Schweizer Aircraft Corporation (Hughes Helicopters, Inc.) Model 269 series helicopters. The AD required a special inspection for debonding of the abrasion strip on certain tail rotor blades. The AD also required the immediate installation of rivets to reinforce the attachment of the tail rotor blade abrasion strip to the body of the tail rotor blade since poor bonding may have occurred during the manufacture of certain blades. The installation of the rivets in conjunction with previous bonding will ensure that the abrasion strip does not separate from the body of the blade. This condition, if not corrected, could result in the possible loss of the tail rotor and subsequent loss of helicopter control.

The inspection and repair procedures required by Priority Letter AD 89-20-03 included Schweizer Service Information Notice (SIN) No. N-183.2, dated March 28, 1988, and Schweizer Installation Instructions No. CKP-C-40, Kit No. SCA-269-K-056, "Installation of Rivets in Rail Rotor Abrasion Strip," dated August 31, 1989. The manufacturer has subsequently issued SIN Notice No. N-183.3, dated September 15, 1989, and revised Installation Instructions CKP-C-40, Kit No. SCA-269-K-056, dated October 27, 1989, to allow for the modification of single tail rotor blades that may be in stock.

Since the SIN's do not meet **Federal Register** criteria for incorporation by reference, paragraphs (a) and (c) of the AD now contain installation and inspection procedures to be accomplished in accordance with Appendix I of the AD. Appendix I contains the applicable portions of part II of Schweizer Service Information Notice N-183-2, dated March 28, 1988. In addition, one blade serial number (S/N) has been corrected by replacing S/N S688 with S668 in paragraph (a).

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 28, 1989, to all known U.S. owners and operators of Schweizer Aircraft Corporation (Hughes Helicopters Inc.) Model 269 series helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register**, with the changes noted above, as an amendment to § 39.13 of part 39 of the FAR to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory

Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Regional Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Schweizer Aircraft Corporation (Hughes Helicopters, Inc.): Applies to all Model 269 series helicopters, certified in any category, equipped with Hughes Helicopters, Inc., tail rotor blades, part numbers (P/N) 269 A6035–21 and 23. (Docket No. 89–ASW–41)

Compliance is required as indicated, unless already accomplished.

To prevent possible loss of tail rotor control, accomplish the following:

(a) Prior to further flight after the effective date of this AD, modify the affected tail rotor blades with the following serial numbers (S/N) in accordance with the procedures detailed in Appendix I of this AD.

Blade S/N's Affected

R0056	S546	S603
R0086	S547	S605
R1059	S549	S607
R1066	S550	S608
R1560	S553	S611–
R1922	S556–	S620
R3296	S563	S623–
R3314	S565	S626
R3330	S566	S631–
R3349	S568–	S633
S21	S571	S637
S431	S573	S638
S513	S576–	S640–
S515	S582	S644
S518	S584	S646
S521	S586	S648–
S524	S588	S650
S534	S589–	S653
S538	S594	S654
S539	S596	S657
S544	S598–	S660–
S662	S672	S684–
S664–	S675–	S688
S666	S677	S691–
S668	S679–	S694
S670–	S682	

(b) Before the first flight of each day, after the effective date of this AD, visually check the abrasion strip of those blades modified as required by paragraph (a) for any evidence of cracking or chipping along the entire abrasion strip/airfoil bond line and at the blade tip.

(c) If, during the check required by paragraph (b), cracking or chipping is observed, inspect the bond line for bond separation using a 10-power or higher magnifying glass. If evidence of debonding along the abrasion strip/bond line or blade tip is detected, inspect the tail rotor blade using dye penetrant or equivalent inspection method and tap test prior to further flight in accordance with Appendix 1 of this AD.

(d) Remove from service, prior to further flight, any rotor blade found to contain bond separation.

(e) The visual check required by paragraph (b) of this AD may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

Note: The pilot, when complying, must make appropriate entries and the record must be maintained in accordance with FAR §§ 91.173 or 135.439.

(f) Aircraft may be ferried in accordance with the provisions of FAR §§ 21.197 and 21.199 to a base where the requirements of this AD can be accomplished.

(g) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, Room 202, Valley Stream, NY.

Note: Blades modified to Schweizer Installation Instructions No. CKP–C–40, Kit No. SCA–269–K–056, dated August 31, 1989, or Schweizer Service Information Notice No. N–183.3, September 15, 1989, Part III, comply with paragraph (a) of this AD.

This amendment becomes effective April 9, 1990 as to all persons, except those persons to whom it was made immediately effective by Priority Letter AD 89–20–03, issued September 28, 1989, which contained this amendment.

Issued in Fort Worth, Texas, on March 5, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

Appendix I

TAP TEST AND DYE PENETERANT INSPECTION PROCEDURE:

a. Perform tail rotor blade abrasion strip 100 hour inspection in accordance with HMI, Appendix C, Part VII, Table 3–2; as amended by Temporary Revision R–27.

INSTALLATION OF RIVETS IN ABRASION STRIP

Materials

Nomenclature	*Source*
Adhesive, epoxy (EA9314/EA9309-preferred)	Commercial/Hysol Division
OR	
Adhesive, epoxy (Room temperature cure)	Commercial
*Rivets (CR2545–4–2) (4 req. per blade—no alternates)	Commercial/SAC

* Included in SA–269K–056 KIT.

Tools and Equipment

Nomenclature	*Source*
*Drill bit, No. 27 Cobalt	Commercial
Drill bits (number set)	Commercial
Drill, portable hand	Commercial
Countersink (100°)	Commercial
Drill stop (Kwik-Lok)	Commercial/ Advanced Air Tool Co.
**Riveter (bulbed Cherrylock type)	Commercial/ Cherry
**Unisink pulling head (preferred)	Commercial/ Cherry
OR	
**Flat pulling head	Commercial/ Cherry

* Included in SA–269K–056 Kit.
** Refer to current Cherrylock bulbed rivet catalog.

Caution

DO NOT ATTEMPT TO PERFORM THIS PROCEDURE WITH THE TAIL ROTOR BLADES ON THE HELICOPTER. FAILURE TO COMPLY WITH THIS CAUTION MAY RESULT IN DEFECTIVE RIVETS AND POSSIBLE BLADE DAMAGE.

PROCEDURE:

a. Remove tail rotor blades in accordance with Basic HMI, Section 9, if not already accomplished.

WARNING

IT IS IMPORTANT TO LOCATE RIVET HOLES EXACTLY AS SPECIFIED IN THE FOLLOWING. FAILURE TO DO SO MAY AFFECT STRUCTURAL INTEGRITY.

CAUTION

IN STEP c. BELOW, OBSERVE THE FOLLOWING:

• IT IS IMPORTANT TO MAINTAIN ADEQUATE EDGE DISTANCE WHEN DRILLING THE TWO OUTBOARD RIVET HOLES. LACK OF EDGE DISTANCE WILL WEAKEN THE MATERIAL AND MAY CAUSE CRACKING WHEN THE RIVETS ARE INSTALLED.

• USE A DRILL STOP TO PREVENT DRILLING INTO OPPOSITE SIDE.

• TO MAINTAIN PROPER HOLE SIZE AND SATISFACTORY RIVET

INSTALLATION, IT IS IMPORTANT TO HAVE BLADE RESTING FLAT ON WORK SURFACE DURING DRILLING AND RIVETING OPERATIONS.

c. Using a No. 27 *Cobalt* drill, locate and drill four rivet holes as shown on Figure 1.

d. Hand deburr rivet holes using 100° countersink.

e. Using epoxy adhesive, wet install four CR2545–4–2 rivets. (Allow adequate drying time prior to performing step h. below.)

CAUTION

INSTALLED RIVET STEMS MAY BE DEBURRED USING A FILE, BUT DO NOT REMOVE MATERIAL FROM LOCKING COLLAR.

f. Inspect the installed rivets in accordance with current Cherrylock bulbed rivet catalog. (If rivet installation is satisfactory, proceed to step h. below.)

CAUTION

DURING RIVET REMOVAL OBSERVE THE FOLLOWING:

- DO NOT DAMAGE OR ENLARGE RIVET HOLE.
- DO NOT DRIVE, OR FORCE RIVET STEM FROM HOLE.
- DO NOT REMOVE RIVETS COMMON TO TIP CAP. IF DEFECTIVE, CONSULT SAC FOR TIP RIB REPLACEMENT.

g. Remove defective rivet(s) as follows:

(1) Carefully grind off locking collar and upper portion of rivet stem.

(2) Using a drill stop, drill through rivet stem using care to prevent hole enlargement.

(3) Push remaining rivet stem (with sheer ring) from hole, and remove from spar.

(4) Inspect hole in spar. If defective, consult SAC.

(5) Return to step d. above and install new rivet(s).

h. Coat the exposed rivet heads with epoxy adhesive. Ensure that stems and rivet head edges are sealed, but do NOT apply excessive adhesive. (See Detail A, Figure 1.) Also ensure that adhesive is smooth without voids.

j. Determine new blade static balance moment by performing step (1) or (2) below, as applicable.

(1) Use special balancing fixture P/N 369A1710–80901 as specified in HMI Appendix C, Part VII, Section 6, Paragraph 6–6.

(2) If special balancing fixture is not available; add 70 gram-inches to the gram-inch moment number on the blade serial number data plate.

l. Carefully burnish the old gram-inch moment number on blade serial number data plate; only as necessary to make it unreadable. Coat burnished area with epoxy adhesive or paint.

m. Install modified tail rotor blades in accordance with Basic HMI, Section 9, in sets of two.

n. Balance tail rotor assembly in accordance with Basic HMI, Section 9.

WEIGHT AND BALANCE DATA

Helicopter Weight and Balance not affected.

BILLING CODE 4910–13–M

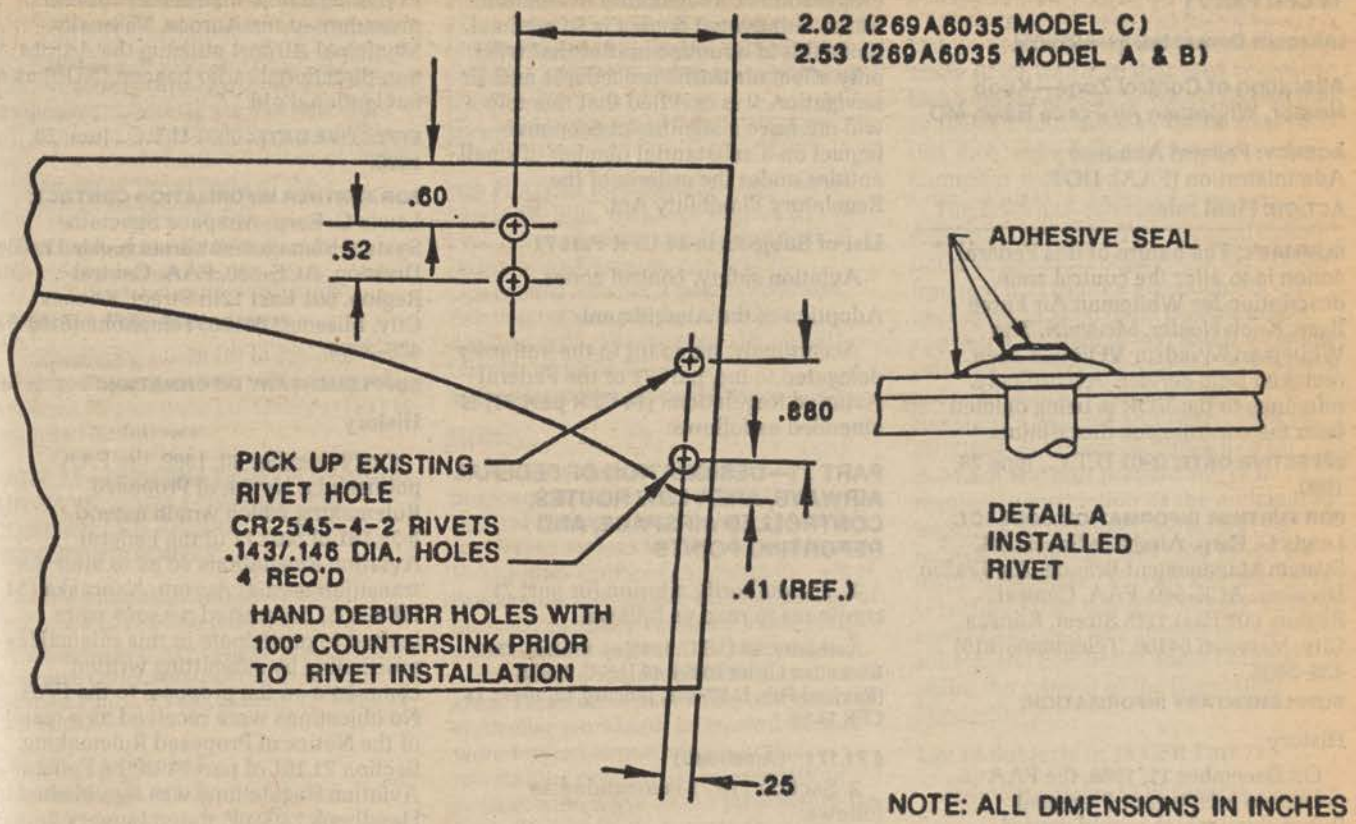


FIGURE 1. ABRASION STRIP RIVET HOLE LOCATION

[FR Doc. 90-6314 Filed 3-19-90; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 71

[Airspace Docket No. 89-ACE-35]

Alteration of Control Zone—Knob Noster, Whiteman Air Force Base, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the control zone description for Whiteman Air Force Base, Knob Noster, Missouri. The Whiteman/Windsor VOR has been removed from service. Accordingly, reference to the VOR is being deleted from the control zone description.

EFFECTIVE DATE: 0901 U.T.C., June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On December 11, 1989, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to alter the control zone description for Whiteman Air Force Base, Knob Noster, Missouri (54 FR 50771). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the control zone description for Whiteman Air Force Base, Knob Noster, Missouri. This action deletes reference in the control zone description to the Whiteman/Windsor VOR, since this navigational aid has been removed from service.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Knob Noster, Whiteman Air Force Base, Missouri [Revised]

Within a 5-mile radius of Whiteman Air Force Base, Knob Noster, Missouri, (lat. 38°43'50" N., long. 93°33'00" W.); within 2 miles each side of the Whiteman TACAN 185 radial, extending from 5-mile radius to 7 miles south of the TACAN. This control zone is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Kansas City, Missouri, on March 5, 1990.

William Behan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 90-6315 Filed 3-19-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 89-ACE-34]

Alteration of Transition Area; Aurora, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Aurora, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure at the Aurora, Nebraska, Municipal Airport utilizing the Aurora non-directional radio beacon (NDB) as a navigational aid.

EFFECTIVE DATE: 0901 U.T.C., June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On November 30, 1989, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to alter the transition area at Aurora, Nebraska (54 FR 49305). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the transition area at Aurora, Nebraska. The NDB at Aurora, Nebraska, has been relocated due to a runway extension. Accordingly, the FAA is developing a new instrument approach procedure utilizing the Aurora NDB as a navigational aid. The establishment of this new instrument approach procedure, based on this approach aid, entails alteration of the transition area at Aurora, Nebraska, at and above 700 feet above ground level, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules from other aircraft operating under visual flight rules.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant

preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Aurora, Nebraska [Revised]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of Aurora Municipal Airport (lat. 40°53'39"N., long. 97°59'39"W.) and within 2 miles each side of the 110° radial of the Grand Island VOR, extending from the 5-mile radius to 7 miles west of the airport, and within 3 miles each side of the 360° bearing from the Aurora, Nebraska, NDB (lat. 40°53'33"N., long. 97°59'49"W.) extending from the 5-mile radius to 8.5 miles north of the airport.

Issued in Kansas City, Missouri, on March 5, 1990.

William Behan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 90-6317 Filed 3-19-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 89-ASO-38]

Alteration of VOR Federal Airway V-179; Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V-179 by extending the airway from Dublin, GA, to Brunswick, GA, via a direct route. A study of air traffic in that area revealed a need for a direct airway to save fuel and to improve flight planning. This action reduces controller workload.

EFFECTIVE DATE: 0901 U.T.C., June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On November 21, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend VOR Federal Airway V-179 from Dublin, GA, direct to Brunswick, GA (54 FR 48114). A study of air traffic activity revealed a need for a direct airway between Dublin and Brunswick to improve traffic flow in this area. This action saves fuel and reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two objections were received from the Department of the Navy and two objections from the Department of the Air Force.

The Navy objected to the penetration of the Gator Low MOA by the proposed realignment of V-179. The Gator Low MOA is normally used Monday through Friday and has a floor of 14,000 feet MSL. However, altitudes below 14,000 feet MSL are available to the Controlling Agency, Jacksonville, FL, ARTCC. Jacksonville has expressed an intention to utilize those lower altitudes to maneuver departure/arrival traffic in the Brunswick, GA, terminal area.

The Department of the Air Force objected to the potential conflict with the Quick Thrust MOA's which are temporary MOA's that are normally used twice a year up to 14 days.

The FAA has agreed to have all nonparticipating air traffic rerouted around the Quick Thrust MOA whenever the Air Force is conducting training missions in that area.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations extends VOR Federal Airway V-179 from Dublin, GA, direct to Brunswick, GA. A study of air traffic in that area revealed that a direct airway between Dublin and Brunswick will improve traffic flow in this area, save fuel, and reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Revised]

2. Section 71.123 is amended as follows:

V-179 [Revised]

From Brunswick, GA; Dublin, GA, to INT Dublin 309° and Athens, GA 222° radials.

Issued in Washington, DC, on March 12, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-6316 Filed 3-19-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 89-AWP-27]

Establishment of J-236

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes new Jet Route J-236 located between Thermal, CA, and Tuba City, AZ. This jet route will improve the flow of increasing traffic departing the San Diego area and the Los Angeles basin airports. This action will provide a more precise means of navigation and reduce controller workload.

EFFECTIVE DATE: 0901 U.T.C., May 3, 1990.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On January 16, 1990, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to establish Jet Route J-236 located between Thermal, CA, and Tuba City, AZ (55 FR 1455). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two comments were received from the United States Marine Corp. (USMC) objecting to the proposal. Air Traffic Control Assigned Airspace (ATCAA) lies overhead the Turtle MOA from FL 180 to FL 220. The USMC suggested a minimum en route altitude (MEA) of FL 230 for J-236. The FAA does not concur with this suggestion. The MEA is based on NAVAID coverage and not airspace alignment; the establishment of J-236 will not affect the present procedures nor operations of the Turtle MOA/ATCAA. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 75 of the Federal Aviation Regulations establishes new Jet Route J-236 between Thermal, CA, and Tuba City, AZ. This jet route will improve the flow of increasing traffic departing the San Diego area and the Los Angeles basin airports. This jet route will alleviate off-course deviations and establish optimum use of the airspace. This action will enhance the flow of air traffic and reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-236 [New]

From Thermal, CA; Needles, CA; to Tuba City, AZ.

Issued in Washington, DC, on March 12, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-6318 Filed 3-19-90; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. Nos. 33-6856; 34-27794; 35-25054; 39-2236; IC-17374; IA-1223]

Handicapped Persons; Accessibility to Open Meetings

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is revising subpart I, part 200 of title 17 to include a notice of accessibility to handicapped persons of open meetings of the Commission. This revision will advise handicapped persons who are planning to attend a public Commission meeting and who require auxiliary aids (such as a sign language interpreter) that they should contact the Selective Placement Coordinator, Office of Personnel, to make the necessary arrangements.

EFFECTIVE DATE: March 20, 1990.

FOR FURTHER INFORMATION CONTACT: Carol K. Scott, Assistant General Counsel (202-272-2472), or Fran L. Paver (202-272-2453), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On July 8, 1988, the Commission joined with other federal agencies in issuing final rules (53 FR 25872) to implement section 504 of the Rehabilitation Act of 1973, as amended. These rules were adopted by the Commission as part of subpart L of 17 CFR part 200. The rules concern the enforcement of nondiscrimination on the basis of handicap in programs and activities conducted by the Commission. To further ensure that handicapped persons can enjoy full access to and participation in open Commission meetings, the Commission is amending its regulations pertaining to public observance of Commission meetings, 17 CFR subpart I, to include a notice of the procedures necessary to obtain auxiliary aids, such as sign language interpreters.

List of Subjects in 17 CFR Part 200

Federal buildings and facilities, Handicapped.

Text of Amendments

For the reasons set out in the

preamble, the Commission is amending part 200 chapter II, title 17 of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart I—Regulations Pertaining to Public Observation of Commission Meetings

1. The authority citation for part 200, subpart I, is revised to read as follows:

Authority: 5 U.S.C. 552b, unless otherwise noted. Section 200.410 also is issued under 29 U.S.C. 794.

2. Section 200.410 is amended by adding a new paragraph (d) to read as follows:

§ 200.410 Miscellaneous.

* * * * *

(d) *Access to public meetings.* Any member of the public who plans to attend a public meeting of the Commission, and who requires an auxiliary aid such as a sign language interpreter, should contact the Commission's Selective Placement Coordinator, Office of Personnel at (202) 272–7065 or TDD number (202) 272–2552, prior to the meeting to make the necessary arrangements. The Selective Placement Coordinator will take all reasonable steps to accommodate requests made in advance of the scheduled meeting date.

By the Commission.

Dated: March 13, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–6306 Filed 3–19–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 89F–0167]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the partial sodium sale of ethylene-acrylic acid copolymer as an adhesive component in food packaging. This action is in response to a petition filed by Michelman, Inc.

DATES: Effective March 20, 1990; written objections and requests for a hearing by April 19, 1990.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 1, 1989 (54 FR 23540), FDA announced that a food additive petition (FAP 9B4146) had been filed by Michelman, Inc., Cincinnati, OH 45236, proposing that the food additive regulations be amended to provide for the safe use of the partial sodium salt of ethylene-acrylic acid copolymer as an adhesive component in laminates that contact dry food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the food additive is safe for use in food packaging that contacts dry food. Therefore, the regulations are amended in 21 CFR 175.105(c)(5) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 19, 1990, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, and 376).

2. Section 175.105 is amended in paragraph (c)(5) by alphabetically adding a new entry to the table to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * *	
Ethylene-acrylic acid copolymer, partial sodium salt containing no more than 20 percent acrylic acid by weight, and no more than 16 percent of the acrylic acid as the sodium salt (CAS Reg. No. 25750–82–7).	For use only in contact with food Type VIII identified in Table 1 of § 176.170(c) of this chapter.
* * * * *	

Dated: March 8, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-6283 Filed 3-19-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 176

[Docket No. 86F-0362]

Indirect Food Additives; Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a copolymer of methacrylic acid and acrylic acid as a component of paper and paperboard in contact with aqueous and fatty foods. This action responds to a petition filed by Betz Laboratories.

DATES: Effective March 20, 1990. Written objections and requests for a hearing by April 19, 1990.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 17, 1986 (51 FR 37074), FDA announced that a food additive petition (FAP 6A3957) has been filed by Betz Laboratories, Somerton Rd., Trevose, PA 19047, proposing that § 173.310 *Boiler water additives* (21 CFR 173.310) be amended to provide for the safe use of a copolymer of methacrylic acid and acrylic acid as an active polymer in boiler water. Subsequently, an amended filing notice was published in the **Federal Register** of August 29, 1989 (54 FR 35724), announcing that Betz Laboratories had amended the petition to indicate that they no longer were seeking to amend § 173.310 to include the use of this copolymer as a boiler water additive in boilers to produce steam that will contact food, but rather were proposing to amend § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of the copolymer of methacrylic acid and acrylic acid in boilers used to produce steam for the manufacture of paper and paperboard in contact with aqueous and fatty foods.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe and that 21 CFR 176.170(a)(5) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 19, 1990 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376).

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry to the table to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Methacrylic acid-acrylic acid copolymer (CAS Reg. No. 25751-21-7).	For use only as a boiler water additive at a level not to exceed 50 parts per million in the boiler water.
* * * * *	

* * * * *

Dated: March 9, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-6282 Filed 3-19-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8292]

RIN 1545-AM87

Treaty-Based Return Positions; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the **Federal Register** publication for Wednesday, March 14, 1990, at 54 FR 9438. The final regulations related to the requirement that any taxpayer who takes a position that a treaty of the United States overrules, or otherwise modifies, an internal revenue law of the United States shall disclose such position.

FOR FURTHER INFORMATION CONTACT: David Bergkuist, 202–566–6442 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction were necessary to provide guidance needed to implement sections 6114 and 6712 of the Internal Revenue Code of 1986 as added by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

Need for Correction

As published, the final regulations contain an error which is in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which were the subject of FR Doc. 90–5619, is corrected as follows:

Paragraph 1. On page 9440, third column, § 301.6114–1(b)(4)(ii)(B), the language "The foreign person is not any of the following:" is removed and the language "The foreign person is any of the following:" is added in its place.

Any taxpayer required to file a tax return on March 15, 1990, who did not obtain an extension of time in which to file that return—

(1) For whom reporting is required under § 301.6114–1(b)(4)(ii) as so corrected, and

(2) For whom reporting was not required under that section as published in the **Federal Register** on Wednesday, March 14, 1990, is hereby allowed until June 12, 1990, to so report under that section as corrected.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90–6240 Filed 3–19–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas in the West Arm of Behm Canal Near Ketchikan, AK

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule; correction.

SUMMARY: On January 25, 1990, the Corps of Engineers published a final rule in the **Federal Register** (55 FR 2586–2587) establishing five restricted areas in the waters of the West Arm of the Behm Canal, north of Ketchikan, Alaska. The regulations in 33 CFR 334.1275(a)(5) contained two errors in the coordinates which define the boundaries of Area No. 5. The correction of the errors will not result in enlarging the area. In line number 15 which reads "below Betton Head at about 55°31.83'N" change the coordinate to "55°30.83'N". In line number 20 which reads "Bond Bay at about 55°33.60'N latitude", change the coordinate to read "55°31.60'N latitude". In addition, the symbol for degrees of latitude and longitude was omitted from paragraph (a) *The areas*, in the document published. Accordingly, we are correcting 33 CFR 334.1275 by publishing paragraph (a) *The areas* in its entirety to add the degrees symbol and change the two coordinates in Area No. 5, as follows.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Gorbics at (907) 753–2712 or Mr. Ralph Eppard at (202) 275–1783.

EFFECTIVE DATE: February 26, 1990.

SUPPLEMENTARY INFORMATION: Section 334.1275(a) is corrected to read as follows:

§ 334.1275 West Arm Behm Canal, Ketchikan, Alaska, Restricted Areas.

(a) *The area—Area No. 1.* The waters of Behm Canal bounded by a circle 2,000 yards in diameter, centered on 55°36'N latitude, 131°49.2'W longitude.

Area No. 2. The waters of Behm Canal bounded by a circle 2,000 yards in diameter, centered at 55°34'N latitude, 131°48'W longitude.

Area No. 3. The waters of Behm Canal excluding those areas designated as areas Nos. 1 and 2 above, bounded by an irregular polygon beginning at the shoreline on Back Island near 55°32.63'N latitude, 131°45.18'W longitude, then bearing about 350°T to 55°38.06'N latitude, 131°46.75'W longitude then bearing about 300°T to 55°38.52'N latitude, 131°48.15'W longitude, then bearing about 203°T to 55°33.59'N latitude, 131°51.54'W longitude, then bearing about 112°T to the intersection of the shoreline at Back Island near 55°32.53'N latitude, 131°45.77'W longitude, then northeast along the shoreline to the point of beginning.

Area No. 4. The waters of Clover Passage bounded by an irregular polygon beginning at the shoreline on Back Island near 55 32.63'N latitude, 131°45.18'W longitude, then bearing 150° T. to the intersection of the shoreline on Revillagegedo Island near 55°30.64'N latitude, 131°43.64'W longitude, then southwest along the shoreline to near 55°30.51'N latitude, 131°43.88'W longitude, then bearing 330°T to the intersection of the shoreline on Back Island near 55°32.16' N. latitude, 131°45.20'W longitude, and from there northeast along the shoreline to the point of beginning.

Area No. 5. The waters of Behm Canal bounded to the north by a line starting from Point Francis on the Cleveland Peninsula to Escape Point on Revillagegedo Island then south along the shoreline to Indian Point, then south to the Grant Island Light at 55°33.4'N latitude, 131°43.6'W longitude then bearing 216° T. to the south end of Back Island and continuing to the intersection of the shoreline on Betton Island at about 55°31.52'N latitude, 131°45.98'W longitude, then north along the shoreline of Betton Island to the western side below Betton Head at about 55°30.83'N latitude, 131°50'W longitude, then bearing 283° T. across Behm Canal to the intersection of shoreline near the point which forms the southeast entrance of Bond Bay at about 55°31.60'N latitude, 131°56.58'W longitude, then northeast to Helm Point on the Cleveland Peninsula, then northeast along the shoreline to the point of beginning at Point Francis.

* * * * *

Dated: March 8, 1990.

Wilbur T. Gregory, Jr.,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 90–6232 Filed 3–19–90; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

34 CFR Part 673

RIN 1840–AB04

Income Contingent Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR part 637 to add the Office of Management and Budget (OMB) control

number of certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective on March 20, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Harold McCullough, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (Regional Office Building 3, room 4310), Washington, DC 20202, Telephone: (202) 732–4490.

SUPPLEMENTARY INFORMATION: On November 6, 1989, final regulations for the Income Contingent Loan Program were published in the **Federal Register** at 54 FR 46692. The effective date of certain sections of these regulations was delayed until information collection requirements contained in those sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has approved the information collection requirements, and those sections of the regulations are now effective.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest, and that a delayed effective date is not required under 5 U.S.C. 553(d)(3).

List of Subjects in 34 CFR Part 673

Education, Loan programs—education, Student aid.

Dated: March 13, 1990.

(Catalog of Federal Domestic Assistance Number N/A)

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends part 673 of title 34 of the Code of Federal Regulations as follows:

PART 673—INCOME CONTINGENT LOAN PROGRAM

1. The authority citation for part 673 continues to read as follows:

Authority: 20 U.S.C. 1087a–1087e, unless otherwise noted

§§ 673.52, 673.53, 673.55, 673.57, 673.58, and 673.59 [Amended]

2. Sections 673.52, 673.53, 673.55, 673.57, 673.58, and 673.59 are amended by adding "(Approved by the Office of Management and Budget under control number 1840–0621)" following these sections.

[FR Doc. 90–6254 Filed 3–19–90; 8:45 am]

BILLING CODE 4000–01–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 580 and 581

[Docket No. 85–19 and 89–4]

Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers or Their Agents; Tariff Publication of Free Time and Detention Charges

AGENCY: Federal Maritime Commission.

ACTION: Lifting of stay; Final rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") issues this final rule amending its domestic offshore tariff, and its foreign tariff and service contract filing regulations pertaining to the publication of free time and detention charges applicable to carrier-provided equipment interchanged with inland carriers, consignees and shippers. A notice of proposed rulemaking appeared in the **Federal Register** on February 3, 1989 (54 FR 5506). Upon consideration of comments received in response to that Proposed Rule, the Commission has made significant changes in the rule as originally proposed. This final rule is intended to simplify the filing of equipment interchange agreements ("EIA"). The final rule provides guidelines for filing a sample EIA and eliminates the necessity of filing complete copies of EIAs that differ in terms and conditions. Indexing and cross-referencing requirements have been modified to lessen their burden. The Final Rule further sets forth procedures for including EIA provisions in service contracts.

Additionally, a previous final rule was issued on this subject in Docket No. 85–19, which was stayed by notice appearing in the **Federal Register** on August 30, 1988 (53 FR 33139). Given the issuance of the Final Rule in Docket No. 89–4, the stay in Docket No. 85–19 is being lifted.

EFFECTIVE DATE: Both the lifting of the stay (Docket 85–19) and this Final Rule (Docket No. 89–4) are effective May 21, 1990.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Acting Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The Commission published a final rule with respect to EIAs in the **Federal Register** on February 26, 1988, with an effective date of March 28, 1988 (53 FR 5770). That rule, issued in Docket No. 85–19, *Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged with Shippers or Their Agents*, amended the Commission's domestic and foreign tariff filing regulations to require common carriers to publish in their tariffs EIAs that contain terms and conditions (including free time allowed and detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers and chassis) by shippers or persons acting on the shippers' behalf. The rule required EIAs to be published in the rules section of a carrier's EIA tariff in accordance with 46 CFR 550.5(b)(8)(xvii) (domestic trades) and 46 CFR 580.5(d)(21) (foreign trades).

On March 9, 1988, a petition was filed by several conferences of ocean carriers requesting a 90-day stay of the effective date of the Docket No. 85–19 final rule to allow additional time for compliance with the new regulation. The Commission granted that request, extending the effective date of the final rule to June 26, 1988 (53 FR 9629, March 29, 1988).

Because of continuing difficulties faced by the industry in attempting to comply with the rule, the Commission granted a further 90-day extension of the rule's effective date to September 30, 1988 (53 FR 23632, June 23, 1988). On August 30, 1988 (53 FR 33139), the Commission issued an indefinite stay of the effective date of the Docket No. 85–19 final rule to permit resolution of a number of remaining issues regarding compliance with various aspects of the EIA filing requirements.

On February 3, 1989, the Commission instituted the present proceeding, Docket No. 89–4, which proposed a further rule (54 FR 5506), to simplify the filing of EIAs by easing tariff filing requirements and clarifying the relationship between EIA filing requirements and service contracts ("Proposed Rule"). The Proposed Rule in Docket No. 89–4: (1) requires the publication of a separate EIA tariff in

those instances where an EIA differs from the provisions contained in the carrier's standard EIA; (2) requires the publication of only that portion of the EIA, i.e., free days and charges, which differs from the standard EIA, eliminating the requirement to file the complete differing EIA; (3) provides for the cross-referencing of foreign rate tariffs; (4) allows conferences to cross-reference the tariff of an individual member; and (5) clarifies the EIA filing requirements for service contracts.[1]

The Proposed Rule also requires minimal information in the EIA tariff in those instances where it differs only with respect to free days and charges. Specifically, the standard EIA would be required to be published in the carrier/conference tariff. If there were deviations from the published standard EIA, the Proposed Rule requires that the deviations be listed in Section 1 of the carrier's EIA tariff. Listed would be those EIAs that deviate from the standard agreement with respect to: location at which the free days and charges applied; equipment subject to the charges; number of free days and charges; and those governing rate tariffs published by the carrier subject to these EIA charges. Where other provisions of the EIA agreement differ, the entire agreement would be required to be published in Section 2 of the carrier's tariff. Additionally, an index would be required to show the name of the rail/motor carrier; location at which the free days and charges applied; equipment subject to the EIA agreement; number of free days and charges; the governing freight tariffs subject to the EIA charges; and the tariff page where the EIA could be located.

Comments on the Proposed Rule have been received from 21 interested parties.[2] In light of the number of submissions and similarity of the arguments, the position taken by each and every commenter will not be individually addressed. Rather, representative comments of certain parties will be presented. Unique comments of the remaining parties will also be noted.

Comments

ANERA et al. argue that implementation of untested procedures in a new and complicated area has the potential for massive additional paperwork and manpower burdens on the industry and Commission staff. They suggest that the Commission establish an FMC/industry task force, to confer and examine the effects of the Proposed Rule and, thereafter, offer recommendations regarding modified methods of implementation. Written comments allegedly are not sufficient to address the Proposed Rule, given the complex and highly technical nature of the tariff filing issues it raises. ANERA et al. allege that compiling and arranging equipment interchange information in the form required by the Proposed Rule would be difficult; that the requirements as they relate to foreign EIAs would be burdensome and possibly lead to uneven compliance and enforcement; and that the indexing and cross-referencing requirements would also be burdensome.

Absent establishment of a task force, ANERA et al. urge that the Proposed Rule initially be made applicable only to EIAs in the United States. They submit that this would give the Commission the opportunity to observe any problems and resolve them before applying the rule universally.

ANERA et al. state that the degree of standardization is much lower in foreign countries resulting in a geometric increase in the amount of paperwork for foreign EIAs. They note that EIAs abroad are often in a foreign language and governed by the laws of those countries, and they question the Commission's ability to enforce its laws and regulations in foreign countries. According to ANERA et al., the regulatory benefits to be derived by requiring the filing of foreign EIAs in their entirety are dubious at best, and do not justify the burden to be imposed.

ANERA et al. further suggest that only free time and detention terms offered by carriers should be required to be filed. They contend that the filing of the entire EIA is a paperwork burden not justified by an overriding regulatory or commercial need. Allegedly, the substance of EIA provisions (insurance requirements, relative liability for loss or damage and repairs to equipment) are relatively standard, and EIAs typically vary only in different geographic areas or for different carriers.

It is also argued that Exhibit 7, an index of EIAs which must be published in their entirety if they differ from the standard EIA, is unnecessary, duplicative, and wasteful, since the entire EIA is already on file. ANERA et al. suggest that a reasonable alternative would be to require the publication of EIAs in alphabetical order in one section of the EIA tariff.

ANERA et al. also suggest that columns 7 and 8 of Exhibit 6 are unnecessary and should be eliminated. (Exhibit 6 would indicate those inland carriers whose free days and charges differ from the standard.) They contend that column 7, which is a cross-reference to the applicable rate tariff, adds to the paperwork burden, and would be of little benefit to the Commission or the shipping public. They believe that any required cross-reference should be from the rate tariff to the EIA tariff. ANERA et al. also contend that column 8 which requires identification of the replacement EIA number when a new EIA is negotiated is unnecessary because a replacement page will convey the same information.

ANERA et al. point out that section 581.4(a)(2)(iii) of the service contract regulations requires that service contracts cross-reference the tariff of general applicability or the equipment interchange staff. They assert that this cross-reference could identify the service contract shipper and could compromise the confidentiality of service contracts. They suggest that section 581.4(a)(2)(iii) be eliminated or modified to provide that cross-references to the tariff of general applicability or equipment interchange tariff be filed with the Commission confidentially with the service contract.

The Venezuelan Agreements state that the Proposed Rule requires all carriers to publish EIAs even if they do not use them. They point out that in

---

[1] The final rule in Docket No. 85-19 requires carriers and conferences to file each EIA *in its entirety*, if it differs from the carriers' standard terms and conditions. This would necessitate a number of nearly identical filings, as many EIAs differ only in minor respects, such as "free days and charges" provisions. The rule proposed in Docket No. 89-4 provides the methodology for implementing the EIA filing requirement provided by Docket No. 85-19.

[2] Comments were submitted by: 1) American President Lines, Ltd.; 2) American Trucking Associations/The ATA Intermodal Council ("ATA"); 3) Asia North American Eastbound Rate Agreement; The "8900" Lines; U.S. Atlantic & Gulf/Australia-New Zealand Conference; and U.S. Atlantic & Gulf/Western Mediterranean Rate Agreement (collectively "ANERA et al."); 4) Aruba Bonaire Curacao Liner Association; 5) Caribbean Shipowners Association; 6) Central America Liner Association and the United States Atlantic & Gulf/Hispaniola Steamship Freight Association; 7) Crowley Maritime Corporation; 8) Independent Container Line, Ltd.; 9) Inter-American Freight Conference; ("IAFC") 10) Intermodal Transportation Association; 11) Matson Navigation Company, Inc.; 12) North Europe-U.S. Pacific Freight Conference/Pacific Coast European Conference; 13) Pacific Coast/Australia-New Zealand Tariff Bureau; 14) Sealand Service, Inc.; 15) Steamship Operators Intermodal Committee ("SOIC"); 16) Transax/Rates ("Transax"); 17) Trans-Pacific Freight Conference of Japan and the Japan Atlantic & Gulf Freight Conference; 18) Transpacific Westbound Rate Agreement ("TWRA"); 19) Transportacion Maritima Mexicana, S.A. de C.V.; 20) U.S. Atlantic-North Europe Conference; Gulf-European Freight Association; North Europe-U.S. Atlantic Conference; and North Europe-U.S. Gulf Freight Association; 21) United States Atlantic & Gulf/Venezuela Freight Association and the Venezuela Discussion Agreement (collectively "Venezuela Agreements").

Venezuela there are no EIAs because the equipment is interchanged through Trailer Inspection Reports, and the terms and conditions for the interchange of equipment are set forth in the conference tariff or, in the case of carriers party to the Venezuela Discussion Agreement, in the tariffs of the individual members. To require domestic inland carriers in Venezuela to enter into EIAs allegedly would require a change in Venezuelan law. The Venezuelan Agreements seek clarification or a change to stipulate that the Proposed Rule applies only to written EIAs with shippers or persons acting on the shipper's behalf.

The Inter-American Freight Conference suggests that the Commission clarify which parties are subject to the EIA regulations. The IAFC notes that the Proposed Rule refers to "shippers or their agents", "shippers or persons acting on the shippers' behalf", "shippers" and "inland carriers." This is said to be confusing. The confusion is allegedly compounded by § 580.1(c)(8), which provides that EIAs with inland carriers are exempt if they are not referred to in the ocean carriers' tariffs and do not affect the carriers' rates, charges or practices.

The IAFC also notes that the Proposed Rule, at §§ 580.5(d)(21) and 580.6(m)(1), appears to require EIA tariffs to be published by individual carriers rather than by conferences. It submits that a conference can agree upon EIAs within the scope of its authority and establish a conference-wide EIA or a conference EIA tariff. A conference-wide EIA tariff is seen as simplifying the conference's tariff structure, making it more understandable for shippers and the Commission's staff.

The IAFC further notes that proposed Exhibits 6 and 7 to part 580 appears to apply only where the standard EIA is filed, and only to the extent that free time and detention charges vary from location to location. It observes that if there are no variances, then a carrier's equipment locations may not be disclosed, since the terms of an EIA do not normally list locations. The IAFC suggests that the regulations be amended to require that all locations be set forth in the applicable tariff.

The IAFC also urges that the regulations be amended to make clear what terms and provisions must be set forth in the EIA. This is said to be necessary since some of the terms and conditions may be established by custom and incorporated implicitly rather than explicitly in EIAs. It suggests that, among other things, EIAs include provisions concerning equipment or services to be furnished with reefer containers; maintenance and repair; insurance; and equipment control and tracing.

The Transpacific Westbound Rate Agreement states that EIAs are negotiated on short notice, and that under the Proposed Rule, a carrier may not be able to implement an EIA for 30 days. TWRA points out that this is a particular problem for controlled carriers, since they, absent special permission, cannot affect any tariff changes on less than 30 days notice. It explains that free time and detention charges may have to be temporarily adjusted in response to changes in a carrier's vessel rotation, as well as weather conditions, port congestion or similar factors. The Proposed Rule's requirement that a carrier not return to its former practice for 30 days allegedly would discourage carriers from giving inland carriers or cargo interests reasonable adjustments based on such factors.

The Steamship Operators Intermodal Committee argues that the requirement that United States and foreign ports be delineated in the text of a tariff page (Exhibits 5 and 8) is unnecessary. SOIC notes that the tariff's geographic scope is already described in Rule 1 and, in abbreviated form, at the top of every tariff page. It urges that the Proposed Rule be amended to provide that a port or point need be mentioned only when the EIA is exclusive to a port or country.

SOIC also suggests that Exhibits 4 and 7 be eliminated entirely. Exhibits 4 (domestic) and 7 (foreign) provide an index of inland carriers with EIAs that differ from the standard. SOIC contends that the alphabetical arrangement of inland carriers required by Exhibits 3 and 6 are, in themselves, an index—(Exhibits 3 (EIA domestic Rule) and 6 (EIA foreign Rule) provide a listing of inland carriers that have free days and/or charges different from the standard set forth in Rule 17 (domestic) or Rule 21 (foreign)). SOIC observes that equipment located overseas frequently moves under EIAs of other parties, such as terminal operators. In these instances, a carrier-controlled container is said to move on a chassis controlled by the third party. SOIC questions whether such EIAs are to be published in a carrier's tariff. It also states that the Proposed Rule does not take into consideration volume movements where it is unreasonable to expect all equipment to be returned within the stipulated free time.

Transax/Rates suggests the filing of EIA information in text format, or allowing for the combination of columns. Transax explains that its electronic systems used for tariff publication or other informational support are based strictly on an 80 column format. It states that the information required on the exhibits in the Proposed Rule exceeds 80 columns. Allowing publication within an 80 column format would allegedly benefit the FMC's Automated Tariff Filing and Information environment once implemented.

The American Trucking Association and the ATA Intermodal Council urge clarification of the term "standard EIA". ATA submits that more then forty ocean carriers and over 2,000 motor carriers are signatories to the Uniform Intermodal Interchange Agreement ("UIIA") administered by the Intermodal Transportation Association. This UIIA agreement sets forth standard terms governing the interchange of equipment between ocean carriers and motor carriers. ATA suggests that, in the case of UIIA signatory carriers, the UIIA be considered the ocean carrier's standard EIA.

Discussion

Upon review of the comments, the Commission has determined to issue a Final Rule which makes significant revisions to the Proposed Rule. In so doing, the Final Rule addresses most of the concerns raised in the comments submitted with respect to the Proposed Rule and, if fact, expressly incorporates many of the suggestions made in those comments. The Commission is also lifting the stay of Docket No. 85–19 effective with the date of this Final Rule. Carriers/conferences must publish their EIAs in their tariffs no later than the effective date of this Final Rule. These EIAs may become effective, pursuant to the provisions of the 1984 Act, 30 days after publication.

The Final Rule eliminates the requirement to publish the entire EIA in those instances where the deviation from the standard EIA is other than free days and charges. This modification eliminates the need for Exhibits 4 (domestic) and 7 (foreign). Furthermore, the Final Rule eliminates the need to file the remaining exhibits by no longer prescribing a format for presenting the required information.

Another significant change is the deletion of the requirement that the EIA tariff cross-reference the tariff of general applicability and service contract essential terms publication. The Final Rule also requires carriers/conferences to identify the locations at which the standard EIA or its exception applies. Other changes include clarifying that conferences may file EIAs and permitting carriers that do not have

EIAs to only publish the terms and conditions for providing equipment to inland carriers in their tariff.

The Commission has also clarified the Final Rule to address IAFC's concern with regard to certain confusion that it believes surrounds the filing requirements for EIA arrangement between carriers and shippers, inland carriers or consignees. The Commission has modified the language of the Final Rule to make clear that the Rule applies only to those EIAs which affect a carrier/conference's rates, charges and practices that affect the shipper or the consignee. The EIA filing requirement provided by the Final Rule applies only to those agreements between carriers/conferences and shippers/consignees, inland carriers or other persons acting as the agent for the person paying the freight charges that result in charges or practices for the account of the person paying the freight. The Final Rule's filing requirement does not apply to EIA agreements between carriers/conferences and inland carriers that do not result in ocean carrier charges to the shipper.

In summary, this Final Rule: (1) requires publication of a sample EIA with standard free days and charges; (2) allows carriers and conferences to publish separately the free days and charges in those instances where they differ from the standard; (3) provides guidelines for filing a governing EIA tariff; (4) permits the referencing of EIA tariffs by individual rate tariffs; (5) clarifies that conferences can file EIA provisions in existing rate and EIA tariffs; and (6) clarifies the filing requirements for service contracts.

Rather than requiring the filing of the entire EIA when the terms and conditions differ from the standard EIA, as originally proposed, the Final Rule requires only the filing of a sample EIA. The sample shall include the standard number of free days and charges. In those instances where the free days and/or charges differ from the standard, the carrier or conference need only file the deviation specifying the party to whom the free days and charges apply, location and type of equipment. A separate section must be created in the individual rate tariff for such EIA filings, or the carrier/conference must file an equipment interchange tariff to accommodate the exceptions. If an equipment interchange tariff is filed, the carrier/conference individual rate tariff or service contract must reference the equipment interchange tariff only.

The provisions of this Final Rule apply to vessel operating common carriers and non-vessel-operating common carriers and do not distinguish between foreign and domesic ports. Therefore, use of carrier equipment regulations apply to free time practices in foreign countries. Given the filing simplifications incorporated into the Final Rule, there is no need to limit its application to domestic EIAs, as suggested by ANERA et al. As a result, carriers or conferences must publish EIAs with respect to foreign port operations. The Final Rule does not, however, relieve controlled carriers from the notice provisions of the 1984 Act as requested by TWRA and SOIC. That matter was not placed at issue in this proceeding and is therefore beyond its scope.

This Final Rule supplements the regulation issued in Docket No. 85–19. It provides the framework for implementing that docket's requirement that carriers and conferences must publish EIAs in their tariffs. While this Final Rule significantly eases the tariff filing requirements for EIAs, it does not affect the exemptions granted in Docket No. 85–19 for EIAs which do not affect the rates of the carrier or conference.[3] The Final Rule should facilitate compliance with the regulations and avoid the imposition of unnecessary and costly burdens on the industry, and also clarify the relationship of the EIA filing requirements to service contracts. Accordingly, because the filing requirement has been simplified and reduced to its bare essentials, the Commission therefore believes it unnecessary to adopt the ANERA et al. suggestion that a FMC/industry task force be formed.

The Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, because it will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission finds that the Final Rule is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). Section 601(2) of the Act excepts from its purview any "rule of particular applicability to rates or practices relating to such rates * * *" As the Final Rule relates to particular application of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this Final Rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (Public Law 96–511) and have been assigned OMB control numbers 3072–0005 for 46 CFR part 550, 3072–0009 for 46 CFR part 580, and 3072–0044 for 46 CFR part 581.

List of Subjects in 46 CFR Parts 550, 580 and 581

Maritime carriers; Rates and fares; Service contracts; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; secs. 8, 9, 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1708, 1709 and 1716); secs. 18(a) and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a) and 841(a)); and sec. 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844), the Federal Maritime Commission amends parts 550, 580 and 581 of title 46 of the Code of Federal Regulations as follows:

PART 550—[AMENDED]

1. The authority citation for part 550 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817(a), 820, 833a, 841, 843, 845a and 847.

2. Section 550.5 is amended by revising paragraph (b)(8)(xvii) as follows:

§ 550.5 Contents of tariffs.

* * * * *

(b) * * *

(8) * * *

(xvii) *Use of carrier equipment.* (A) If a carrier provides equipment to shippers, consignees, or inland carriers or other persons acting as the agent for the person paying the freight charges, a sample equipment interchange agreement or the terms and conditions governing the use of said equipment shall be published in the carrier or conference's tariff. The sample agreement shall include the general terms and conditions affecting cost (e.g. maintenance and repair requirements, insurance obligations, pickup or drop off charges and services such as tracing and replenishing fuel or refrigerant for reefer containers) that govern the use of carrier-provided equipment, including

[3] The exemption provisions contained in §§ 550.1(a)(8) and 580.1(c)(8) provide: "Equipment Interchange Agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect tariff rates, charges or practices of the carriers."

cargo containers, trailers, and chassis. It shall also include the standard free time allowed and detention or similar charges assessed. Standard free time and charges shall be included as the last item in the rule and shall clearly identify the location and type of equipment to which they apply. If a carrier does not have a sample equipment interchange agreement, the carrier must publish its terms and conditions and standard free time and charges in its tariff as specified above.

(B) If a carrier has exceptions to the standard free time and charges, or changes in the terms and conditions which result in changing the free days and/or charges, the party (inland carrier, consignee, or shipper) to which the exception applies, location, type of equipment and free days and charges shall be clearly identified for each exception. The exceptions shall be included in either a separate section within the tariff or a governing equipment interchange tariff filed in accordance with §§ 550.14(a)(1) and 550.20. In either instance, Rule 17 in the carrier's rate tariff shall contain only a reference to the location of the sample EIA and exceptions. Exceptions shall be arranged in alphabetical order by the party to which the exception applies. A carrier is not precluded from publishing a separate equipment interchange tariff even though it does not have exceptions to the standard free days and charges.

* * * * *

3. Section 550.14 is amended by revising paragraph (a)(1) to read as follows:

§ 550.14 Governing tariffs.

(a)(1) Rules, bills of lading/contracts of affreightment and equipment interchange agreements may be published separately as a "rules tariff", "bills of lading tariff" or "equipment interchange tariff", as provided in §§ 550.5(a)(8), (b)(7) and (b)(8)(xvii). For the purposes of this rule, classifications of freight, equipment registers, hazardous cargo rules and similar lengthy tariff matters are considered "rules tariffs."

* * * * *

4. A new § 550.20 is added which reads as follows:

§ 550.20 Equipment interchange tariffs.

(a) Equipment interchange tariffs may be filed as provided in §§ 550.5(b)(8)(xvii) and 550.14(a)(1). They shall be filed in accordance with the tariff filing requirements of part 550 except as provided herein. The tariff shall be arranged in the following order:

(1) Title Page
(2) Check Sheet (optional)
(3) Table of Contents
(4) Explanation of Symbols, Abbreviations and Reference Marks
(5) Rules and Regulations
(6) Free Time and Charges—List of Exceptions to Standard Free Days and or Charges.

(b) The rules and regulations section of the equipment interchange tariff shall include a list of ports or points served (§ 550.5(b)(3)), and Rule 17 (Use of Carrier Equipment, § 550.5(b)(8)(xvii)). Required Rules 1 through 16 shall be noted as "Not Applicable."

PART 580—[AMENDED]

5. The authority citation for part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716 and 1718.

6. Section 580.5 is amended by revising paragraph (d)(21) and adding paragraph (g)(5).

§ 580.5 Tariff contents.

* * * * *

(d) * * *

(21) *Use of carrier equipment.* (i) If a carrier or conference provides equipment to shippers, consignees, or inland carriers or other persons acting as the agent of the person paying the freight charges, a sample equipment interchange agreement or the terms and conditions governing the use of said equipment shall be published in the carrier or conference's tariff. The sample agreement shall include the general terms and conditions affecting cost (e.g. maintenance and repair requirements, insurance obligations, pickup or drop off charges and services such as tracing and replenishing fuel or refrigerant for reefer containers) that govern the use of carrier-provided equipment, including cargo containers, trailers, and chassis. It shall also include the standard free time allowed and detention or similar charges assessed. Standard free time and charges shall be included as the last item in the rule and shall clearly identify the location and type of equipment to which they apply. If a carrier or conference does not have a sample equipment interchange agreement, the carrier must publish its terms and conditions and standard free time and charges in its tariff as specified above. Where a foreign government prohibits the use of a carrier or conference equipment interchange agreement, Rule 21 should contain a statement to that effect.

(ii) If a carrier or conference has exceptions to the standard free time and charges, or changes in the terms and conditions which result in changing the free days and/or charges, the party (inland carrier, consignee, or shipper) to which the exception applies, location, type of equipment and free days and charges shall be clearly identified for each exception. The exceptions shall be included in either a separate section within the tariff or the carrier or conference must file a governing equipment interchange tariff filed in accordance with §§ 580.5(a)(7) and 580.17. In either instance, Rule 21 in the carrier or conference rate tariff shall contain only a reference to the location of the sample equipment interchange agreement and exceptions. Exceptions shall be arranged in alphabetical order by the party to which the exception applies. A carrier or conference is not precluded from publishing a separate equipment interchange tariff even though it does not have exceptions to the standard free days and charges.

* * * * *

(g) * * *

(5) Reference may be made to an equipment interchange tariff for free time allowed and detention or similar charges, if applicable.

7. In § 580.13, the first sentence of paragraph (a) and paragraph (b) are revised to read as follows:

§ 580.13 Governing tariffs.

(a) Rules, bills of lading/contracts of affreightment and equipment interchange agreements may be separately published as a "rules tariff", "bill of lading tariff", or "equipment interchange tariff" as provided in §§ 580.5(c)(10), (d)(8) and (21). * * *

(b) Except for equipment interchange tariffs, no rate tariff shall refer to or be governed by another rate tariff.

* * * * *

8. A new § 580.17 is added which reads as follows:

§ 580.17 Equipment interchange tariffs.

(a) Equipment interchange tariffs may be filed as provided in §§ 580.5(d)(21) and 580.13(a). They shall be filed in accordance with the tariff filing requirements of part 580, except as provided herein. The tariff shall be arranged in the following order:

(1) Title Page
(2) Check Sheet (optional)
(3) Table of Contents
(4) Explanation of Symbols, Abbreviations and Reference Marks
(5) Rules and Regulations
(6) Free Time and Charges—List of Exceptions to Standard Free Days and/or Charges.

(b) The rules and regulations section of the equipment interchange tariff shall

include Rules 1 (Scope, § 580.5(d)(1)) and 21 (Use of Carrier Equipment, § 580.5(d)(21)). Required Rules 2 through 20 shall be noted as "Not Applicable." Equipment interchange tariffs need not reference carrier or conference rate tariffs.

PART 581—[AMENDED]

9. The authority citation for part 581 continues to read:

Authority: 46 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

10. Section 581.4 is amended by adding a new paragraph (a)(2)(iii) as follows:

§ 581.4 Form and manner.

(a) * * *

(2) * * *

(iii) The number of free days and charges for use of carrier or conference provided equipment. The carrier or conference may reference its tariff of general applicability or equipment interchange tariff. In those instances, reference need be made to Rule 21 and the applicable FMC tariff number only.

* * * * *

11. The stay of the Final Rule published in Docket No. 85–19(53 FR5770, February 26, 1988) affecting 46 CFR 550.1(h) (redesignated as 550.1(a)(8) at 54 FR 11717, March 22, 1989), 550.5(b)(8)(xvii), 550.5(b)(9), 580.1(c)(8), and 580.5(d)(21) is lifted. The stay of these rules was last published in the **Federal Register** on August 30, 1988 (53 FR 33139).

Joseph C. Polking,

Secretary.

[FR Doc. 90–6162 Filed 3–19–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–55; RM–6593, RM–6715, RM–6760]

Radio Broadcasting Services; Bolingbroke, Unadilla and Warner Robbins, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 273A to Warner Robbins, Georgia, at the request of Donald W. Earnhart, and Channel 271A to Bolingbroke, Georgia, in response to a petition filed by William L. Taylor, which was treated as a counterproposal in this proceeding. See 54 FR 11251, March 17, 1989. In addition, Channel 278A is allotted to Unadilla, Georgia, in response to a counterproposal filed by Gary Davidson. Channel 273A can be allotted to Warner Robbins in compliance with the Commission's minimum distance separation requirements with a site restriction 3.5 kilometers (2.2 miles) south to avoid a short-spacing to Station WKZR(FM), Channel 272A, Milledgeville, Georgia. The coordinates are North Latitude 32–35–44 and West Longitude 83–37–00. Channel 271A can be allotted to Bolingbroke in compliance with the Commission's minimum distance separation requirements with a site restriction 10.4 kilometers (6.4 miles) west to avoid a short-spacing to Station WKZR(FM), Channel 272A, Milledgeville, Georgia. The coordinates are North Latitude 32–55–22 and West Longitude 83–54–30. Channel 278A can be allotted to Unadilla in compliance with the Commission's minimum distance separation requirements with a site restriction 11.9 kilometers (7.4 miles) southeast. The coordinates are North Latitude 32–09–46 and West Longitude 83–41–12. With this action, this proceeding is terminated.

DATES: Effective April 27, 1990. The window period for filing applications will open on April 30, 1990, and close on May 30, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–55, adopted February 23, 1990, and released March 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

PART 73—[AMENDED]

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Georgia by adding Bolingbroke, Channel 271A, by adding Unadilla, Channel 278A, and by adding Warner Robbins, Channel 273A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–6235 Filed 3–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–94; RM–6631]

Radio Broadcasting Services; Huron, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dakota Broadcasting, Inc., substitutes Channel 256C1 for Channel 221A at Huron, South Dakota, and modifies its license for Station KURO–FM to specify operation on the higher powered channel. Channel 265C1 can be allotted to Huron in compliance with the Commission's minimum distance separation requirements and can be used at the station's presently authorized site. The coordinates for this allotment are North Latitude 44–20–46 and West Longitude 98–12–34. At the request of Dakota Communications, Ltd., the Commission allots Channel 286A to Huron as its second local FM service. Channel 286A can be allotted to Huron in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 286A are North Latitude 44–21–36 and West Longitude 98–13–06. With this action, this proceeding is terminated.

DATES: Effective April 23, 1990. The window period for filing applications for Channel 286A will open on April 24, 1990, and close on May 24, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Corrected Report and Order, MM Docket No. 89–94, adopted January 29, 1990, and released March 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 46 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under South Dakota is amended by removing Channel 221A and adding Channels 256C1 and 286A at Huron.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-6236 Filed 3-19-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 90649-0062]

RIN 0648-AC40

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to change the time frame during which the daily catch rate for giant Atlantic bluefin tuna in the General category may be adjusted. This action provides the flexibility necessary to adjust the catch rate at any time during the fishing season. The intended effect of this rule is to maximize the use of the quota.

EFFECTIVE DATE: April 19, 1990.

ADDRESSES: Copies of the environmental assessment may be obtained from Richard Roe, Regional Director, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, Atlantic Bluefin Tuna Policy Analyst, Plan Administration Branch, NMFS Northeast Regional Office, 508-281-9324.

SUPPLEMENTARY INFORMATION: On July 17, 1989, NMFS published a proposed rule at 54 FR 29916 to amend the regulations governing the Atlantic bluefin tuna fishery (50 CFR part 285). The rule proposed to: (1) Remove the reference to the September 1 date at § 285.24(a) of the regulations, and (2) prohibit the use of spotter aircraft as an aid to fishing by vessels operating in the handgear categories of the fishery. Public comments on the proposed rule were invited through August 7, 1989. In addition, NMFS held a series of public hearings in the New England and Mid-Atlantic regions to provide the public further opportunity to express their views. This final rule implements only the first of the two proposed measures.

Current regulations allow the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), to adjust the daily catch limit for vessels in the General category, on or about September 1 from one to a maximum of three giant Atlantic bluefin tuna per day per vessel. The purpose of the daily catch limit is to ensure there is quota available throughout the traditional season, thus affording fishermen from various locales an opportunity to fish. Because the entire quota for this category has not been harvested since 1985, the flexibility to adjust the daily catch limit earlier in the season is appropriate. NMFS believes that careful use of this flexibility would allow fishermen to harvest a greater portion of the quota without jeopardizing the September through October late-season fishery.

The second measure contained in the proposed rule concerned the use of spotter aircraft as an aid to the handgear fishery. This measure was proposed in response to fishermen who petitioned NMFS to prohibit aircraft because they felt that use of aircraft changes the traditional nature of the fishery. NMFS initially responded to the petition by publishing a notice of "Receipt of a Petition for Rulemaking" on March 31, 1988 (53 FR 10415). Comments received in response to this notice prompted NMFS to publish the proposed rule and hold public hearings on the issue. After consideration of the available information and public comment, this measure is not implemented.

Discussion of Comments

NMFS received 87 written comments during the public comment period. Many commenters did not state clearly whether they were in favor of or opposed to either of the two measures. Forty commenters favored the measure granting increased flexibility to adjust the daily catch limit in the General category, as appropriate. Sixteen commenters favored a prohibition on the use of spotter planes and five were opposed. A summary of comments received and NMFS's response to them follows:

Comments: Several commenters were concerned that an early adjustment to the daily catch limit could "shut out" the New Jersey sportfishing community. One commenter shared this concern but did not oppose the measure if the 50 ton (45.4 mt) "set aside" was unaffected. A fishing association commented in favor of the measure, provided that the fishery remains open for the traditional length of the season.

Response: NMFS will continue to administer the General category adjustment provision cautiously. The wide variation in weekly catches during the short summer season makes it difficult to project landings more than one or two weeks in advance. NMFS will continue to use the best information available for selecting the daily catch rate that will serve the greatest number of participants by keeping the fishery open.

The purpose of the "set aside", found at § 285.22(a), is to provide fishermen in any identified area an opportunity to fish if it is determined that seasonal distribution, abundance, or migratory patterns would preclude this opportunity. The amount of the "set aside" allocation is not to exceed 50 tons (45.4 mt) or the maximum reported landings in the identified area in any of the previous three years. This allocation is made from the General category quota (650 tons, 589.7 mt) and is limited to giant Atlantic bluefin tuna. The "set aside" provision is not changed by this rulemaking.

Comment: Several commenters opposed increasing the daily catch limit earlier in the season because of conservation reasons.

Response: The primary conservation measure for Atlantic bluefin tuna is a quota. Since the quota is not changed, conservation goals will be met. In addition, a secondary conservation goal is to minimize harvest of small and medium bluefin to rebuild the population. Although the measure will likely increase the catch of bluefin up to the amount of the quota, this increase is confined to giant bluefin and will not affect the smaller size classes.

Comment: Several commenters opposed a prohibition on the use of spotter planes. They equate planes with other technological improvements, such as on-board computers, fish finding equipment, more powerful vessels, etc. Some believe the quotas would not be taken without the aid of aircraft. Further, they argue that planes do not scare the fish, as proponents of the ban claim, any more than do vessels. If spotter planes are prohibited from the handgear fisheries, it would be

discriminatory not to prohibit them from the purse seine fishery as well. Finally, it would be inappropriate for NMFS to ban planes; the matter should be left to the Federal Aviation Administration (FAA).

Those in favor of the ban believe further restrictions are necessary to rebuild the stock. Many believe the Harpoon Boat category should be eliminated because the fishery is no longer prosecuted in the traditional manner. The disparate catch rate in the Harpoon Boat and General categories is no longer justified. Some believe that planes spook the fish, causing quotas to go unfilled. Several others cited safety considerations as a reason for the prohibition.

Response: After considering the comments stated above, NMFS has decided not to impose a ban on the use of spotter aircraft. The NMFS believes that factors other than Federal regulation have led to altered fishing practices. The socioeconomic considerations that applied during implementation of new regulations need not be reconsidered whenever changes occur in the fishery.

The quota is the primary mechanism for conserving and rebuilding the stock. Whether or not planes are used by fishermen has no direct bearing on conservation. In regard to vessels and planes "spooking" fish, there is little or no evidence to support this claim and NMFS does not believe it is appropriate to prohibit spotter aircraft on this basis.

The most serious concerns raised by the spotter plane issue are safety and disparate catch limits. Concerning the former, NMFS is not aware of any danger directly posed by regulations currently in effect. NMFS agrees with the commenters who believe that air safety is the responsibility of the FAA.

Regarding the latter concern, NMFS explored the possibility of eliminating the Harpoon Boat category by presenting it as an alternative proposal. This proposal was included on the summary document provided at the public hearings. The agency will continue to explore this option; however, no changes are made to the category by this rulemaking.

Changes From the Proposed Rule

The decision not to implement the prohibition of spotter aircraft is the only change from the proposed rule.

Discussion of Change

The petition presented to NMFS was brought by harpoon boat fishermen. The basic argument in the petition is that the traditional harpoon vessels are being displaced by aircraft-aided fishermen and, in light of NMFS's policy to preserve traditional fisheries for Atlantic bluefin tuna, the use of aircraft should be banned.

There is some evidence that spotter planes contribute to the displacement of the traditional harpoon vessels. (The background for the establishment of the Harpoon Boat quota was reviewed in the preamble to the proposed rule and is not fully repeated here). NMFS, however, does not agree that the use of spotter planes should be banned, particularly when it appears there is no resource conservation benefit to such action.

NMFS's policy to preserve traditional Atlantic bluefin tuna fisheries is based on socioeconomic considerations. When implementing regulations to conserve these resources, economic displacement is minimized, where possible, by preserving the traditional fisheries. Administrative and enforcement costs are also minimized because current fishing practices are embraced. When the Harpoon Boat category was established, the traditional fishery was defined as one prosecuted by hand-thrown harpoon. Most harpooners believed they could compete fairly for the limited quota based on their own skill and abilities.

The socioeconomic displacement that may have occurred with the use of spotter planes is not attributable to Federal regulations. Instead, these changes have arisen from the skill and abilities of the participants and the increasingly high prices received for the product. The success of the fishery has made investment in new equipment cost effective. Despite new developments, the conservation goals have been met because the quota remains intact.

Further, the decision not to prohibit spotter aircraft is based on factors relating to enforceability. The review of public correspondence and hearing testimony revealed that the prohibition would not be fully supported by the industry. In fact, the issue is so divisive that it is unlikely the measure would be self-enforcing as proponents of the ban have claimed. Enforcement of such a prohibition would require sophisticated surveillance of vessel-to-aircraft communication. Even if transmissions could be monitored, coded messages could well negate the effectiveness of such monitoring. Thus, obtaining sufficient evidence to prove that an aircraft was unlawfully aiding a vessel fishing for Atlantic bluefin tuna would be very difficult. Given the costs of enforcement, the remote likelihood of successful prosecution and the questionable benefits that might accrue to the fishery even if the ban could be enforced, the decision not to impose a ban on the use of spotter planes is the more prudent course of action.

Classification

The Northeast Regional Office of NMFS has prepared an environmental assessment for this rule and the Assistant Administrator concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the environmental assessment from the Northeast Regional Office at the address listed above.

The Under Secretary for Oceans and Atmosphere (Under Secretary) determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The purpose of the change in the daily catch limit-time frame is to relieve a regulatory restriction on the participants in the General category to allow full use of the quota. Removing the reference date for a decision to adjust the daily catch limit will allow the Assistant Administrator to set the daily catch limit to reflect the availability of the fish during a fishing season. As a result, a regulatory flexibility analysis was not prepared.

The Under Secretary determined that this final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 285

Fisheries.

Dated: March 15, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Service.

For the reasons set forth in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. Section 285.24 is amended by revising paragraph (a) to read as follows:

§ 285.24 Catch limits.

(a) From June 1, vessels permitted in the General category under § 285.21(b) may catch only one giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator may adjust the daily catch rate limit to a maximum of three giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the **Federal Register** of any adjustment in the allowable daily catch limit made under this paragraph. Operators of vessels permitted in the General category may possess giant Atlantic bluefin tuna in an amount not to exceed a single day's catch as allowed by the daily catch limit in effect at that time.

* * * * *

[FR Doc. 90-6379 Filed 3-19-90; 8:45 am]

BILLING CODE 3510-22-M

---

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the domestic annual processing (DAP) flatfish fisheries have attained their primary prohibited species catch (PSC) allowance of Pacific Halibut, 467 metric tons (mt), in the Bering Sea and Aleutian Islands (BSAI) area. Therefore, the Secretary of Commerce (Secretary) is prohibiting any further DAP directed fishing for yellowfin sole, rock sole, and "other flatfish" in Zones 1 and 2H. This action is necessary to prevent excessive bycatch of Pacific halibut in the trawl fishery for groundfish in an area of particular importance to the Pacific halibut stock. This action is intended to carry out the objectives of measures to control the bycatch of prohibited species in the trawl fishery for groundfish.

EFFECTIVE DATE: 12 noon Alaska Standard Time (AST), March 14, 1990, through midnight, December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett (Resource Management Specialist), NMFS, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668, telephone 907-586-7229.

SUPPLEMENTARY INFORMATION: The Secretary approved, on July 7, 1989, Amendment 12A to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands area (FMP) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 12A was implemented by the Secretary with a final rule published August 9, 1989 (54 FR 32642) and effective September 3, 1989, through December 31, 1990.

The purpose of Amendment 12A is to limit incidential catches of the prohibited species *C. bairdi* Tanner crab, red king crab, and Pacific halibut by the groundfish fisheries in the BSAI area. Such incidential catches are referred to as bycatches in fisheries targeting other species. The amendment establishes 20 PSC limits in four fisheries: the domestic annual processing (DAP) fisheries for flatfish, DAP for other species, joint venture processing (JVP) fisheries for flatfish, and JVP for other species.

Each of the 20 PSC allowances prescribed for the 1990 groundfish fisheries appears in the initial specifications notice for 1990 for the BSAI area (55 FR 1434, January 16, 1990). The PSC allowances were based on the anticipated bycatch of prohibited species derived by a mathematical prediction procedure, which used statistical information derived from fishery performance in previous years and projected performance for the 1990 fishing year. The primary PSC allowance for Zones 1 and 2H for Pacific halibut in the BSAI area for the DAP flatfish fisheries is 467 mt.

Closure

The Regional Director has determined that the primary DAP flatfish PSC allowance for Pacific halibut in the BSAI area will be reached on March 14, 1990. Under regulations implementing Amendment 12A, when the primary PSC allowance for Pacific halibut for the DAP flatfish fishery is reached, Zones 1 and 2H are closed to further directed fishing for yellowfin sole, rock sole, and "other flatfish" by DAP vessels.

Therefore, the Secretary, by this notice and under authority of § 675.21(c)(1)(iii), prohibits for the remainder of the fishing year the retention by DAP vessels of groundfish caught from Zones 1 (statistical areas 511, 512 and 516) and 2H (statistical area 517) that is composed of 20 percent or more in the aggregate of yellowfin sole, rock sole, and "other flatfish."

Classification

These actions are taken under §§ 675.20 and 675.21 and they comply with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. *et seq.*

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 90-6241 Filed 3-14-90; 3:30 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 54
Tuesday, March 20, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 568

[No. 90-288]

RIN 1550-AA25

Minimum Security Devices and Procedures

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule.

SUMMARY: The Office of Thrift Supervision ("Office"), in coordination with the three bank supervisory agencies, has reviewed its regulation concerning minimum security devices and procedures, and determined that it is appropriate to revise the regulation to reflect changes in the technology of security devices, and to implement changes made by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"). The revision incorporates amendments made to the Bank Protection Act of 1968 by FIRREA and provides savings associations with flexibility to avoid the technical obsolescence that occurred with the existing regulation.

DATES: Comments must be received by May 21, 1990.

ADDRESSES: Comments may be submitted to: Director, Information Services, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the Office of Communications, Information Services Division, 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Larry A. Clark, Senior Trust Specialist, Compliance Programs, (202/785-5439), Office of Thrift Supervision, 801 17th St, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Bank Protection Act of 1968 (12 U.S.C. 1881-1884) requires the federal financial institution supervisory agencies to establish minimum standards for bank and savings and loan association security devices and procedures, in order to discourage crime and to assist in the identification of persons who commit such crimes. To implement this statute a substantially similar regulation was adopted in 1969 by each of the federal supervisory agencies—Comptroller of the Currency, Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, and the Federal Home Loan Bank Board (predecessor to the Office). With the exception of minor, nonsubstantive changes in 1981, this regulation has not been modified since it was first adopted.

The existing regulation's appendix recommends specific types of security devices to be used by financial institutions. Due to the advancement of technology in security devices, these recommendations now reference obsolete equipment. For example, the requirements for surveillance systems states that the film used in the camera should be capable of operating not less than three minutes and the film should be at least 16mm. Today's camera systems are more likely to be continuous video cameras.

The Office believes that any standards that reference specific security devices are likely to become obsolete because technology is continuing to advance at a rapid pace. To avoid the necessity of constantly updating required security devices, the Office's proposed regulation takes a more flexible approach. It requires each savings association to designate a security office who will administer a written security program. It states that the security program shall include certain procedures. The proposed regulation also requires that, at a minimum, four specific security devices be installed, but leaves it to the discretion of the security officer to determine which additional security devices will best meet the needs of the program. In this way the security officer can choose the most up-to-date equipment that meets the requirements of his or her particular association. This approach also addresses the difficulty caused by establishing specific standards to apply to all associations regardless of their exposure to crime.

The Office believes that this proposed regulation complies with the requirements of the Bank Protection Act. That Act requires that the supervisory agencies issue minimum standards for the installation, operation and maintenance of security devices and procedures. The proposed regulation establishes a minimum standard by requiring four specified security devices. These four devices are: a secure space for cash; a lighting system for illuminating the vault; an alarm system; and tamper resistant locks on exterior doors and windows. In addition, the proposed regulation establishes the contents of a security program, e.g., procedures for opening and closing for business, for safekeeping of valuables, and for identifying persons committing crimes. These are the minimum procedures that should comprise an association's security program. To assist associations in establishing their program, the regulation suggests certain factors to be considered when selecting additional security devices.

To ensure that an association's security program is reviewed on a regular basis for effectiveness, the proposed regulation requires a report to be made by the security officer to the association's board of directors at least annually. This changes the current requirement, which was eliminated by FIRREA, that reports must be filed periodically with a financial institution's primary supervisory agency.

The existing regulation was formerly located at 12 CFR part 563a. It has been redesignated as part 568 (see 54 FR 49411 (November 30, 1989).)

The following is a section-by-section analysis showing the modifications to the existing regulations:

Section 568.1—Scope of Part and Definitions

This section has been rewritten as new § 568.1. The description of the regulation has been changed to emphasize the responsibility of an association's board of directors to ensure that the association adopts and maintains appropriate security procedures. The definitions have been eliminated, and any definition needed has been provided where the defined word is first used.

Section 568.2—Designation of security officer

Only minor changes were made to this section.

Section 568.3—Security devices

Paragraph (a). The concept of the security officer surveying the need for security devices is contained in new § 568.3(b)(5). The required minimum security devices for each association set forth in § 568.3(a)(1)–(a)(4) are now set forth in new § 568.3(b)(1)–(b)(5), with the addition of a requirement for a secure space to protect cash or other liquid assets.

Paragraph (b). This paragraph has been included in new § 568.3(b)(5).

Paragraph (c). This is the exception language allowing an association to not comply with the specifics of the regulation so long as it preserved a statement of the reasons in its records. Because the specificity of the regulation has been eliminated, this section has been deleted.

Section 568.4—Security procedures

Paragraph (a). The implementation requirements are now found in new § 568.2.

Paragraph (b). This subpart has been revised to combine similar functions and is found at new § 568.3.

Section 568.5—Reports and records

Paragraph (a). The requirement for filing reports regularly with the regulatory agency has been changed to require annual reports to the association's board of directors. This is found at new § 568.4.

Paragraph (b). The requirement of internal recordkeeping of external crimes is now a suggested procedure under § 568.3(a)(2).

Paragraph (c). The requirement for special reports whenever requested by the regulatory agency has been eliminated as unnecessary because an agency can obtain such reports through its regular supervisory powers.

Section 568.6—Corrective action

This section has been eliminated because it is covered under the Office's supervisory authority to prevent unsafe and unsound practices.

Section 568.7—Penalty provisions

This section has been eliminated as unnecessary because it is contained in the statute and need not be set forth in the regulation.

Appendix A and Appendix B

Both appendices have been deleted. Appendix A was considered to be too specific and had become obsolete. Any specific new requirements would also have to be updated with advances in technology. Therefore, the draft regulation has been changed to be very general, with the requirement that the association determine what is the best means of protecting itself and identifying criminals.

Appendix B concerns actions to be taken by employees in the case of a robbery. This has been deleted because it is included in the list of suggested procedures to be established under the security program required by § 568.3(a).

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Office certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. Small entities already are required to comply with the security standards established in the existing regulation, and this amendment provides for more flexibility in devising security programs, which should help minimize the existing costs to the institutions. The amendment also replaces required reports to the government with annual reports to the association's board of directors, which should ease the regulatory burden on small institutions.

Executive Order 12291

The Office has determined that this proposed rule does not constitute a "major rule" and, therefore, will not require the preparation of a final regulatory impact analysis.

Paperwork Reduction Act Notice

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1550, Washington, DC 20503, with copies to the Office of Thrift supervision at the address previously specified.

The requirement for a written security program is contained in 12 CFR 568.2. The requirement that the security officer for each savings association report at least annually to the association's board of directors on the effectiveness of the security program is contained in 12 CFR 568.4. This information will be used by the Office of Thrift Supervision to ensure that a savings association is in compliance with the statutory and regulatory requirements relating to minimum security devices and procedures. The report to the board of directors will ensure that an association's security program is reviewed on a regular basis for effectiveness. The likely recordkeepers are savings associations. The total number of estimated recordkeepers is 2,889. The estimated number of hours to complete the recordkeeping is 3. Thus, the estimated total annual recordkeeping burden is 8,667 hours.

List of Subjects in 12 CFR Part 568

Reporting and recordkeeping requirements, Savings associations, Security measures.

Accordingly, the Office hereby proposes to amend part 568, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below:

1. Part 568 is revised to read as follows:

PART 568—SECURITY PROCEDURES

Sec.

Authority: 12 U.S.C. 1881–1884.

§ 568.1 Authority, purpose, and scope.

(a) This regulation is issued by the Office of Thrift Supervision (the "Office") pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882). It applies to savings associations. It requires each association to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts.

(b) It is the responsibility of the association's board of directors to comply with this regulation and ensure that a security program for the association's main office and branches is developed and implemented.

§ 568.2 Designation of security officer.

Within 30 days after the effective date of insurance of accounts, the board of directors of each savings association shall designate a security officer who shall have the authority, subject to the approval of the board of directors, for immediately developing and administering a written security program, to protect each of the association's offices from robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts.

§ 568.3 Security program.

(a) *Contents of security program.* The security program shall:

(1) Establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(2) Establish procedures that will assist in identifying persons committing crimes against the association and that will preserve evidence that may aid in their identification or conviction. Such procedures may include, but are not limited to:

(i) Retaining a record of any crime committed against the association;

(ii) Maintaining a camera that records activity in the office; and

(iii) Using identification devices, such as bait money, dye packs or electronic tracking devices.

(3) Provide for initial and periodic training of employees in their responsibilities under the security program and in proper employee conduct during and after a robbery; and

(4) Provide for selecting, testing, operating and maintaining appropriate security devices, as specified in paragraph (b) of this section.

(b) *Security devices.* Each savings association shall have, at a minimum, the following security devices:

(1) A means of protecting cash or other liquid assets, such as a vault, safe, or other secure space;

(2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the office;

(3) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary;

(4) Tamper-resistant locks on exterior doors and exterior windows designed to be opened; and

(5) Such other devices as the security officer determines to be appropriate, taking into consideration:

(i) The incidence of crimes against financial institutions in the area;

(ii) The amount of currency or other valuables exposed to robbery, burglary, and larceny;

(iii) The distance of the office from the nearest responsible law enforcement officers;

(iv) The cost of the security devices;

(v) Other security measures in effect at the office; and

(vi) The physical characteristics of the structure of the office and its surroundings.

§ 568.4 Report.

The security officer for each savings association shall report at least annually to the association's board of directors on the effectiveness of the security program.

Dated: February 2, 1990.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 90-6257 Filed 3-19-90; 8:45 am]

BILLING CODE 6720-01-M

Customs Service

19 CFR Part 177

Proposed Interpretative Rule Relating to the Classification of Garments Composed in Part of Linings or Interlinings of Specialized Fabrics or Nonwoven Insulating Layers

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed interpretive rule; Solicitation of comments.

SUMMARY: Customs has, in various rulings, determined that garments composed in part of linings or interlinings of specialized fabrics, or plastic membranes laminated to fabrics, or with heavy nonwoven insulating layers, were classifiable in Headings 6113 or 6210, Harmonized Tariff Schedule of the United States (HTSUS). The linings made of specialized fabrics and similar linings provide a barrier against wind and outside moisture while allowing the transpiration of water vapor away from the body. Heavy nonwoven insulating layers provide a significant added degree of warmth over that imparted by lighter normal weight insulating layers. Those rulings were based on Customs interpretation of the wording of the above Headings, which provide for garments "made up" of specified fabrics. Under that interpretation a garment was considered "made up" of any fabric which imparted a significant characteristic to the garment. We now believe that the term "made up" in Headings 6113 and 6210, HTSUS, only refers to that portion of a garment, e.g. the outer shell, which is considered in determining the ultimate legal classification of that garment. Customs is seeking comments regarding the proposed change in position.

DATES: Comments must be received on or before May 21, 1990.

ADDRESSES: Comments (preferably in triplicate may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Ave., NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Commercial Rulings Division, U.S. Customs Service, (202) 566-8181.

SUPPLEMENTARY INFORMATION:

Background

Heading 5603, Harmonized Tariff Schedule of the United States (HTSUS), provides for "Nonwovens, whether or not impregnated, coated, covered or laminated." Heading 5903, HTSUS, provides for "textile fabrics impregnated, coated, covered or laminated with plastics, other than (certain tire cord fabrics)." Customs has determined that garments composed in part of linings or interlinings of specialized fabrics, or plastic membranes laminated to fabrics, or with heavy nonwoven insulating layers normally coming under those headings are legally classifiable under Heading 6113 and 6210, HTSUS. This conclusion, is based on Customs interpretation of the wording in Headings 6113 and 6210, HTSUS, which provides for garments which are, among other things, "made up" of fabrics of headings 5603 or 5903, HTSUS. The Customs interpretation is at least partially based on the definition of the term "made up" in Note 7 to Section XI, HTSUS, which generally provides for goods assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded). Customs present position, based on various rulings, is that a garment is "made up" of any fabric which imparts a significant characteristic to the garment. Therefore, a garment may be "made up" of a fabric but not be classified at the subheading level, following General Rule of Interpretation (GRI) 3 (b) or (c), HTSUS, as being of that fabric.

The linings or interlinings of specialized fabrics, or plastic membranes laminated to fabrics, of which some of these garments are composed, provide a barrier against wind and outside moisture while allowing the transpiration of water vapor away from the body. The heavy nonwoven insulating layers of some of the garments provide a significant added degree of warmth over that imparted by lighter normal weight insulating layers.

After a review of prior rulings, Customs now believes that it is not appropriate to classify garments based on the composition of their linings, interlinings or nonwoven insulating layers. Therefore, it is Customs view that garments consisting of different fabrics should not be classifiable in Headings 6113 or 6210, HTSUS, unless

one of the fabrics listed in those Headings is determined to impart the essential character to the garment in question. It is also our view that while the aforementioned linings, interlinings or nonwoven insulating layers do impart desirable and, sometimes, necessary features to garments, it is usually the outer shell which imparts the essential character to the garment because the outer shell normally creates the garment.

Comments

Before making a determination on this matter, Customs invites written comments from interested parties on this issue. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Headquarters, U.S. Customs Service, 1301 Constitution Ave., NW., room 2119, Washington, DC 20229.

Authority

This notice is published in accordance with § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Drafting Information

The principal author of this document was Arnold L. Sarasky, General Classification Branch, U.S. Customs Service. However, other personnel participated in its development.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: March 14, 1990.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 90-6331 Filed 3-19-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-370]

RIN 1218-AB15

Occupational Exposure to Bloodborne Pathogens

AGENCY: Occupational Safety and Health Administration [OSHA], Department of Labor.

ACTION: Notice of extension of comment periods; Availability of new information in the record.

SUMMARY: The Occupational Safety and Health Administration is: (1) Extending the time allowed for participants in the Bloodborne Pathogens hearings to submit additional information and briefs; (2) notifying the public of the availability of the results of a survey relating to the technological and economic feasibility of implementing the proposed standard in potentially affected non-hospital facilities; and (3) notifying the public that the results of a similar survey on hospital facilities will be completed soon and will also be made available to the public for review and comment.

The comment periods are being extended because it may not be possible to collect and submit all of the information that participants in the hearings agreed to provide to the Agency within the times originally set by the Administrative Law Judge. The public is being informed about and asked to comment upon the survey data to help assure their accuracy since these data will be used to refine the Agency's preliminary estimates of population at risk, costs of compliance and economic impacts. By extending the comment periods for hearing participants and setting deadlines for the general public to comment on the surveys, OSHA believes all interested parties will be provided with ample opportunity to express their views to the Agency, which will result in a final standard for occupational exposure to Bloodborne Pathogens based upon a complete record and supported by an accurate assessment of potential costs to employers.

DATES: Additional information from participants in the hearings must be postmarked on or before April 19, 1990. Comments, summations and briefs must be postmarked on or before May 21, 1990.

Comments from interested persons or organizations on the surveys must be postmarked on or before May 21, 1990.

ADDRESSES: Additional information, comments, summations and briefs from hearing participants are to be submitted in quadruplicate to: Tom Hall, OSHA Division of Consumer Affairs, Docket No. H-370, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Comments from the public on the surveys are to be submitted in quadruplicate to the Docket Officer, Docket No. H-370, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone, (202) 523-7894. Submissions addressing the surveys limited to ten pages or less in length may also be transmitted by facsimile to (202) 523-5046 or (for FTS) to 8-523-5046, provided the original and 4 copies of the comment are sent to the OSHA docket office thereafter.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration OSHA, U.S. Department of Labor, Office of Public Affairs, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Extension of the Comment Period

OSHA published a Notice of Proposed Rulemaking (NPRM) to reduce occupational exposure to bloodborne pathogens on May 30, 1989. (54 FR 23042). Public hearings were held in Washington, DC, September 12-27, 1989; Chicago, IL, October 17-20, 1989; New York City, November 13-16, 1989; Miami, FL, December 19-22, 1989; and San Francisco, CA, January 9-17, 1990. At the close of the last public hearing on the proposed standard in San Francisco, January 17, 1990, Administrative Law Judge James Guill set the following deadlines for participants to send material to OSHA: March 20, 1990, for the submission of additional information and April 19, 1990, for submission of comments, summations and briefs. Throughout the course of the hearings, OSHA asked various participants to submit additional information on issues of particular concern to the participant or on issues about which the participant had expertise that the Agency believed would augment the record. OSHA believes more time is needed for participants to gather and submit this information. Additionally, some of the transcripts from the hearing were made available to the public in the docket office as late as February 16, 1990, which may not have allowed enough time for participants to use them to help prepare their comments. For these reasons, Administrative Law Judge Guill has decided to extend the date for submitting additional information to April 19, 1990, and the date for submitting comments, summations and briefs to May 21, 1990. Participants in the hearings must submit their materials by these dates in order for the Agency to be able to assure full consideration of the information in drafting the final standard.

II. Survey on Economic and Technological Feasibility of the Proposed Standard for the Non-Hospital Sectors

When OSHA proposed to reduce occupational exposure to hepatitis B virus (HBV), human immunodeficiency virus (HIV), and other bloodborne pathogens, the Agency made preliminary determinations that certain employees face a significant health risk as the result of occupational exposure to blood and other potentially infectious materials and that it is technologically and economically feasible to minimize this risk using a combination of engineering and work practice controls, personal protective equipment, training, medical follow-up of exposure incidents, vaccination (where applicable), and other provisions. (See 54 FR 23042). The feasibility determination was based on the best available evidence in the record, which consisted primarily of comments received in response to OSHA's Advance Notice of Proposed Rulemaking (52 FR 45438), existing government employment and establishment data, industry surveys, and a number of site visits to potentially affected facilities.

In order to better evaluate the economic and technological feasibility of the final OSHA Bloodborne Pathogens standard, OSHA gathered statistically accurate data to assess the extent to which workers are presently at risk and to which various types of facilities potentially affected by an OSHA rule have already implemented infection control measures to protect workers from infectious diseases. Justification for the data collection and survey methodology were detailed in a Notice published in the **Federal Register** [54 FR 30330]. These data will supplement public comments received in response to the NPRM and testimony presented during informal public hearings.

OSHA identified 18 facility types in which occupational exposure to human blood or other potentially infectious material is likely to occur. OSHA then surveyed these 18 industries to assess: extent of worker exposure to blood and other potentially infectious materials; usage rates of personal protective equipment; training practices to alert workers to the dangers of bloodborne pathogens; safety and operational practices when dealing with blood or body fluids; and policies and procedures to be followed in the event of an occupational exposure incident. OSHA relied on 12 different survey instruments to accommodate the particular needs of each sector.

III. Summary of Survey Results

Figure 1 displays the sample size, number of respondents, and the percentages of completed surveys by sector. The table indicates a 73% average response rate with a range from 46% (Cell 16—Correctional Facilities) to 94% (Cell 7—Drug Treatment Facilities).

FIGURE 1.—SAMPLE RESPONSE RATES

Cell	Title	Sample size	Number responding	Percent responding
1	Doctors' Offices	502	254	51
2	Dentists' Offices	342	250	73
3	Nursing Homes	318	259	81
4	Medical and Dental Labs	196	144	73
5	Home Health Care Facilities	219	169	77
6	Hospices	151	125	83
7	Drug Treatment Center	200	188	94
8	Dialysis	166	139	84
9	Blood Collection Facilities	186	155	83
10	Residential Care Facilities	185	135	73
11	Personnel Services	662	452	68
12	Funeral Homes	125	93	74
13	Industrial Health (500+ employees)	191	150	79
14	Research Labs	196	121	62
15	Fire and Rescue Dept	171	154	90
16	Correctional Facilities	185	86	46
17	Police Dept	177	142	80
18	Medical Equipment	153	121	79

Figure 2 presents the number of employees and establishments identified in the survey. As shown, 2,453,896 exposed workers in 274,296 establishments are represented by the survey results.

FIGURE 2.—NUMBER OF WORKERS AND ESTABLISHMENTS

	Workers		Establishments	
	Total	Exposed	Total	Affected
Industry Sector				
(1) Physicians	1,289,686	640,681	162,365	122,104
(2) Dentists	576,964	373,749	107,053	100,174
(3) Nursing Homes	1,203,208	486,470	12,979	12,213
(4) Med and Dent Labs	106,476	62,854	7,771	4,425
(5) Home Health Care	94,205	41,643	1,655	1,399
(6) Hospices	29,351	10,856	943	653
(7) Drug Treatment	25,423	6,722	3,916	754
(8) Dialysis Centers	16,777	12,688	782	782
(9) Blood Banks	29,165	18,788	418	415
(10) Residential Care	128,972	49,102	7,275	2,425
(11) Personnel Svcs	224,376	61,389	5,206	1,359

FIGURE 2.—NUMBER OF WORKERS AND ESTABLISHMENTS—Continued

Industry Sector	Workers		Establishments	
	Total	Exposed	Total	Affected
(12) Funeral Services	93,630	42,452	15,491	14,810
(13) Indust Hlth Unit	173,974	55,716	4,248	4,162
(14) Research Labs	116,172	15,180	2,597	1,225
(15) Fire/Rescue	130,172	94,144	1,964	1,854
(16) Corrections	424,302	210,789	797	715
(17) Police	388,015	267,070	4,241	4,200
(18) Med Equip Repair	9,302	3,603	2,060	627
Total	5,060,170	2,453,896	341,761	274,296

Figure 3 presents a profile of existing policies for the prevention of occupationally acquired bloodborne infectious disease. The weighted results indicate that about 90 percent of affected establishments have infectious bloodborne disease policies, with the great majority of them requiring all blood to be handled as infectious.

FIGURE 3.—POLICIES ON HANDLING BODY FLUIDS PERCENT OF ORGANIZATIONS

Industry Sector	With any policy (percent)	Written policy (percent)	With policy treating all blood as contaminated [1] (percent)
(1) Physicians	81.08	36.76	78.92
(2) Dentists	97.85	64.81	96.14
(3) Nursing Homes	97.49	94.14	89.95
(4) Med and Dent. Labs	95.12	64.63	93.92
(5) Home Health Care	95.78	93.64	95.00
(6) Hospices	96.33	95.11	91.59
(7) Drug Treatment	91.64	86.07	91.64
(8) Dialysis Centers	100.00	99.23	100.00
(9) Blood Banks	99.28	97.36	89.90
(10) Residential Care	68.95	60.91	68.95
(11) Personnel SVCS	88.15	86.46	87.27
(12) Funeral Services	98.85	62.07	95.40
(13) Indust Hlth Unit	79.31	62.08	77.24
(14) Research Labs	95.10	85.39	90.29
(15) Fire/Rescue	89.80	74.64	89.37
(16) Corrections	95.38	93.42	93.42
(17) Police	70.99	49.30	67.21
(18) Med Equip Repair	78.47	34.29	75.92
Total	89.24	53.86	86.95

[1] Expressed as a percentage of all establishments with policies.

In Figure 4, weighted results of current practice with respect to measures recommended to prevent occupational exposure or infections are presented. These results indicate the majority of the affected universe to be taking recommended precautions to protect themselves or their employees from possible infection with a bloodborne agent.

Figure 4.—PROTECTION OF WORKERS

Offered free	Percent of exposed workers					HBV Vaccine (percent)
	Total		Wearing			
	Exposed workers	Gloves (percent)	Face protection (percent)	Gowns (percent)	Offered training (percent)	
Industry Sector:						
Physicians	640,681	88.51	61.19	80.78	70.23	79.63
Dentists	373,749	98.01	90.90	85.26	84.51	74.37
Nursing Homes	486,470	89.10	73.49	80.49	97.66	27.48
Med/Dent Labs	62,854	85.84	74.99	88.95	88.85	86.51
Home Health Care	41,643	91.09	81.13	83.83	99.37	20.41
Hospices	10,856	87.37	58.94	68.14	99.62	49.26
Drug Treatment	6,722	88.02	78.56	70.39	83.12	53.30
Dialysis Centers	12,688	98.14	79.54	81.78	99.86	74.69
Blood Banks	18,788	87.45	67.67	84.33	96.50	90.67
Residential Care	49,102	78.06	93.71	88.19	94.87	53.17
Personnel SVCS	61,389	N/A	N/A	N/A	96.34	35.80
Funeral Services	42,452	99.15	74.80	99.34	80.60	61.67
Indust Hlth Unit	55,716	87.52	72.06	84.54	47.10	49.70
Research Labs	15,180	95.97	89.77	96.94	77.99	79.05
Fire/Rescue	94,144	92.15	65.18	66.59	89.13	75.82
Corrections	210,789	89.44	83.23	14.41	87.85	19.65
Police	267,070	86.90	49.38	22.98	90.31	49.96
Med Equip Repair	3,603	84.27	42.51	42.92	62.90	32.97

Figure 4.—PROTECTION OF WORKERS—Continued

Offered free	Percent of exposed workers					
	Total		Wearing			HBV Vaccine (percent)
	Exposed workers	Gloves (percent)	Face protection (percent)	Gowns (percent)	Offered training (percent)	
Total	2,453,896	90.22	73.52	74.42	84.60	57.07

IV. Survey to Support the Economic and Technological Feasibility Analysis of the Proposed Standard for the Hospital Sector

The Office of Regulatory Analysis is currently completing a similar survey to support the economic and technological feasibility analysis of the proposed bloodborne pathogens standard for the hospital sector. When the data are analyzed, the results will be placed in the record so that interested parties can review and comment upon them. OSHA anticipates these results will be in the record on April 13, 1990. OSHA is notifying the public of this survey with this announcement; no further **Federal Register** announcements concerning this survey will be made. All interested parties are invited to comment on the results of this survey. Comments must be submitted by May 21, 1990.

V. Availability of Survey Results and Request for Public Comment

OSHA solicits public comment on the results of the surveys on the non-hospital sectors and on the hospital sector. Survey results for the non-hospital sectors are currently available for inspection and copying in the OSHA Docket Office. The results of the hospital sector survey will be placed there when available. OSHA believes this will be on or before April 13, 1990. The Docket Office is located in room N-2625 of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The telephone number is 202 (523-7894). The Office is open from 8 a.m. to 4:45 p.m., Monday through Friday.

Comments on the surveys are to be submitted in quadruplicate to the Docket Officer at the above address. Submissions of 10 pages or less may also be transmitted by facsimile to (202) 523-5046 or (for FTS) to 8-523-5046, provided the original and 4 copies are sent to the OSHA docket office thereafter.

Authority: Secs. 6(b), 8(c), and 8(g), Pub. L. 91-596, 84 stat. 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR Part 1911; and Secretary of Labor's Order No. 1-90 (55 FR 9033).

Signed at Washington, DC on this 14 day of March 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-6287 Filed 3-19-90; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas, Pacific Ocean, San Clemente Island, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the regulations which establish two naval danger zones and promulgate regulations to add another danger zone in the waters offshore of San Clemente Island, California. The danger zones as presently promulgated may not provide adequate coverage within the shore bombardment range off San Clemente Island to ensure a sufficient margin of safety for civilian craft operating in the vicinity of Pyramid Cove. These amendments, if adopted, will more realistically reflect the hazards of operating within the shore bombardment range and more adequately provide for the safety of lives and property of pleasure boaters and fishing vessels which routinely operate in the southern portion of San Clemente Island.

DATES: Written comments must be received on or before April 19, 1990.

ADDRESSES: Send written comments on this proposal to HQUSACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Harlacher at (213) 894-5606 or Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: Regulations were promulgated in 33 CFR 334.950 establishing a Navy shore bombardment area offshore of San Clemente Island by the Secretary of the Army on 24 December 1948. Another regulation in 33 CFR 334.970 which established a danger zone offshore of San Clemente Island was approved by the Secretary of the Army on 19 April 1967. These danger zones and several other danger zones remain in effect in the vicinity of San Clemente Island, California.

The Commander, Naval Surface Force, San Diego, California, has requested that the regulations in 33 CFR 334.950 and 334.970 be amended and that another danger zone be established in the immediate area to ensure a sufficient margin of safety for civilian craft operating in the area.

Since the regulations and restrictions affecting these danger zones are essentially the same and the danger zones are in close proximity to each other, we propose to combine the existing danger zones presently in § 334.950 and § 334.970 into § 334.950 and also add the new danger zone into this section. This is proposed primarily in the interest of brevity and to reduce the space required in the CFR.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply.

I hereby certify that this proposed rule will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), transportation, danger zones. In consideration of the above, the Corps of Engineers proposes to amend part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C.1) and 40 Stat. 892; (33 U.S.C.3).

2. Section 334.950 is revised to read as follows:

§ 334.950 Pacific Ocean at San Clemente Island, California; Navy shore bombardment areas.

(a) *The danger zones.* (1) The waters of the Pacific Ocean within an area beginning at China Point Light; extending in a direction of 181 degrees true, 2.0 nautical miles; thence 072.5 degrees true, 5.375 nautical miles; thence 313 degrees true to Pyramid Head Light.

(2) The waters of the Pacific Ocean within an area beginning at China Point Light; extending in a direction of 181 degrees true, 2.0 nautical miles; thence 303 degrees true, 5.35 nautical miles; thence 0404 degrees true to the beach.

(3) The waters of the Pacific Ocean within an area beginning at Pyramid Head Light; extending in a direction of 133 degrees true, 2.0 nautical miles; thence 024 degrees true, 2.14 nautical miles, thence 313 degrees true, 7.6 nautical miles; thence 220 degrees true to the beach.

(b) *The regulations.* (1) All vessels shall promptly vacate the areas when ordered to do so by the Navy or the Coast Guard. Vessels shall not enter the areas during periods scheduled for firing. These areas are used for various surface and air gunnery, and aerial bombing exercises by the United States Navy, Coast Guard and Marine Corps. Hazardous conditions exist during shore bombardment by naval ships in the area seaward of that described in paragraphs (a)(1) and (a)(2) of this section between the firing vessel and the shore. The area described in paragraph (a)(3) of this section is hazardous due to the possibility of rounds landing in the waters east of San Clemente Island.

(2) Mariners are warned that unexploded ordinance exists within the shore bombardment area on San Clemente Island and in the surrounding waters. Mariners should exercise extreme caution when operating in the area.

(3) Information about scheduled exercises will be published in the Local Notice to Mariners and also may be obtained by calling the shore bombardment area scheduler at (619) 437–2231. Vessels in the vicinity of San Clemente Island may obtain information on the status of the range by contacting the Navy Observation Post by marine radio on Channel 16. However, the Navy Observation Post is normally manned only during firing exercises. In addition, since the Navy Observation Post may not be able to receive radio transmissions or answer a vessel calling from the area described in paragraph (a)(3) of this section due to interference from the land mass, it is recommended that callers position their craft for line-of-sight transmission with the Navy Observation Posts near Pyramid Cove prior to assuming that the range is not in use.

(4) Except in an emergency, no vessel shall anchor in these areas without first obtaining permission from the Commander, Naval Base, San Diego, or from the senior officer present in the area who may grant permission to anchor not exceeding the period of time that he, himself, is authorized to remain there. The senior officer present shall advise the Commander, Naval Base, San Diego when and to whom a berth is assigned.

(5) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, and such agencies as he/she shall designate.

§ 334.70 [Removed]

3. Section 334.970 is removed.

Dated: 7 March 1990.
Approved:

Wilbur T. Gregory, Jr.,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 90–6231 Filed 3–19–90; 8:45 am]
BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS–400043; FRL–3689–1]

Zinc Borate Hydrate; Toxic Chemical Release Reporting; Community Right-to-Know Denial of Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to delete zinc borate hydrate (ZB–2335) from the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The decision is based on evidence that the chemical can be reasonably anticipated to be toxic to aquatic organisms. In addition, ZB–2335 can be reasonably anticipated to cause adverse developmental and reproductive effects in humans.

FOR FURTHER INFORMATION CONTACT: Robert J. Israel, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, In Washington, DC and Alaska, 202–479–2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The denial is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99–499, "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition the Agency to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by issuing an explanation of why the petition is denied.

II. Description of Petition

On September 7, 1989, EPA received a petition from U.S. Borax Research Corporation to delete zinc borate hydrate (ZB–2335) from the EPCRA section 313 list of toxic chemicals. ZB–2335 is reportable under the zinc compounds category. The petition was based on U.S. Borax's contention that ZB–2335 does not exhibit the toxicity that zinc and other zinc compounds exhibit, and thus does not meet the EPCRA section 313 criteria for listing. The statutory deadline for EPA's response is March 6, 1990. U.S. Borax Research has also applied for registration of ZB–2335 as a fungicide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That application is currently under review by EPA.

III. EPA's Review of Zinc Borate Hydrate

A. Chemistry Profile

ZB–2335 has the formula $2(ZnO)3(B_2O_3)3{\cdot}5(H_2O)$. The CAS Registry Number, which is formula specific, is 12513–27–8; the tradename is FIREBRAKE ZB. This compound is a non-corrosive white solid and is slightly soluble in deionized water (0.18 wt

percent at 25 °C). The solubility increases with decreasing pH. ZB–2335 melts at temperatures greater than 850 °C and has a very low vapor pressure (<0.0000001 torr). Except for its water solubility and X-ray pattern, ZB–2335 has physical properties similar to anhydrous zinc borate.

ZB–2335 is a buffering compound (between pH 4 to 7) and in deionized water, it has a pH of 7.6. It almost completely hydrolyzes at pH 4 to give zinc ion and boric acid. In basic media, it slowly hydrolyzes into zinc hydroxide (precipitate) and borate ion. The rate of hydrolysis is rapid under acidic conditions and the concentration of both zinc and borate ions increases as pH decreases below pH 7.6. The concentration of zinc ions decreases as pH increases above pH 7.6. The concentration of borate ions is at a minimum at pH 7.6, and increases slightly as pH increases above 7.6. It is anticipated that under the conditions of environmental pH, a pH range from 6 to 9, significant amounts of both zinc and borate ions will be available from hydrolysis of ZB–2335. As an illustration, when 5.0 grams of ZB–2335 is suspended in 100 cc of water, the concentrations of zinc ions and borate ions can be expected to be 16 to 3,700 ppm and 550 to 1,700 ppm, respectively, depending upon the pH.

B. Toxicity Evaluation

Except for the acute and environmental toxicity data for ZB–2335 provided by the petitioner, there are apparently no data available on health and environmental effects resulting from any of the hydrous or anhydrous forms of zinc borate, including ZB–2335. Since ZB–2335 dissociates in water to generate both zinc and borate ions, EPA's health and environmental review addressed toxicity for zinc borate hydrate as well as both zinc and borate ions. All readily available data including those provided in the petition, studies retrieved from literature searches, and documents prepared by EPA were considered in the health and environmental assessment.

1. *Environmental toxicity.* There is sufficient evidence to reasonably anticipate that zinc ion causes environmental toxicity. The available evidence indicates that the zinc ion is highly toxic to aquatic organisms and has a high potential to bioaccumulate. Conversely, the borate ion exhibits low toxicity; acute toxicity values in fish ranged from 5,000 ppm to 19,000 ppm. Borate ions also have a low potential to bioaccumulate; bioconcentration factors (BCFs) of less than 50 were noted in aquatic organisms.

ZB–2335 will dissociate in water. While concentrations of zinc ion are greatest at pH values lower than 5, at pH 7 there is still potential for sufficient amounts of zinc ion to be available to cause toxicity to aquatic organisms. In natural waters, zinc ion occurs in both suspended and dissolved forms. It can exist as a simple hydrated ion, as various inorganic salts, in stable organic complexes, or adsorbed into, or occluded in, inorganic or organic colloids. The fractions of zinc in each of these forms is dependent upon the pH, the total amount of zinc available in water, and the presence of other metal ions or organic and inorganic compounds.

a. *Acute aquatic toxicity.* The levels of zinc ion causing acute toxicity for various fish and invertebrates range from 40 ppb to 58,100 ppb. For example, a literature review revealed thirty-two 96–hr LC_{50} values for fathead minnows ranging from 600 ppb to 35,500 ppb. The wide range is partially due to the hardness of the water used in the studies, because generally as water hardness increases the acute toxicity of zinc ion decreases. Other factors such as pH, age and size of the test organisms, and temperature may also contribute to this wide range of values.

Estuarine and marine fish are less sensitive to zinc ion than marine invertebrates. As an illustration, LC_{50} values range from 2,730 ppb for larvae of Atlantic silversides to 83,000 ppb for larvae of mummichog while EC_{50} values of 310 and 166 ppb were calculated for oysters and hard shell crabs, respectively.

According to the petitioner, the acute 96–hr LC_{50} value for ZB–2335 for rainbow trout was 2.4 ppm (water hardness, 43 mg/l as $CaCO_3$). In addition, literature searches revealed that the 96–hr LC_{50} value for zinc ion for rainbow trout (swim-up life stage) was 93 ppb and for cutthroat trout was 90 ppb.

Also submitted by the petitioner, a 48–hr LC_{50} of 76 ppm for ZB–2335 was calculated for daphnids. The 48–hr LC_{50}s for zinc ion for daphnids, selected from the literature, are 40 ppb (no information on water hardness) and 100 ppb (water hardness 45 mg/l as $CaCO_3$). The value calculated by the petitioner is considered high largely because of high hardness of the water (180 mg/l as $CaCO_3$) used for the tests. The "no discernible effect concentration" was less than the lowest test concentration of 8.4 ppm.

b. *Chronic aquatic toxicity.* The studies submitted to the Agency by the petitioner only addressed the acute toxicity of zinc borate hydrate. A potential for chronic toxicity was, however, indicated by the high ratio of the 24–hr LC_{50} to the 96–hr LC_{50} for trout. Although chronic studies using estuarine and marine organisms are limited, there is a high concern for chronic aquatic toxicity due to zinc ion.

The Maximum Acceptable Toxicant Concentration (MATC) in soft water is 36 to 71 ppb for rainbow trout fry (hatching from unexposed eggs). The MATC for fathead minnows, based on spawning and hatching success and fry survival in hard water, is 30 to 160 ppb. The MATC for fathead minnows in soft water is 78 to 145 ppb. In invertebrates (*Daphnia magna*), reproduction was impaired by 10 percent after a 21–day exposure to 70 ppb zinc ion. Cell growth was inhibited in algae after exposure for 7 days at a concentration of 30 ppb; the EC_{95} for growth after exposure for 14 days was 68 ppb.

c. *Bioaccumulation.* Zinc ion bioaccumulates in aquatic organisms. Bioconcentration factors (BCFs) of 1,130 and 432 were noted in mayflies and flagfish, respectively. BCFs for marine algae and oysters were noted to be 4,680 and 16,600, and 16,700, respectively.

2. *Reproductive and developmental toxicity.* EPA believes that ZB–2335 can be reasonably anticipated to cause adverse reproductive and developmental (teratogenic) effects in humans.

a. *Zinc.* There is little data available on developmental toxicity due to excess zinc in humans. Several studies in animals have, however, demonstrated developmental toxicity due to excess zinc levels. Exposure to excess zinc oxide during gestation resulted in an increase in the incidence of resorptions, although there was disagreement as to exactly what levels of excess zinc are required to generate this effect. A significant increase in resorptions was observed in rats after exposure to 4,000 ppm (200 mg/kg/day) of zinc oxide in one study and to 150 ppm (7.5 mg/kg/day) of zinc oxide in another study. However, a third study revealed no increased resorption at 2,000 ppm (100 mg/kg/day).

Postnatal survival in mice was also significantly reduced following prenatal exposure to 2,000 ppm zinc oxide (240 mg/kg/day). Postnatal growth was reduced following exposure to excess zinc oxide, 2,000 ppm, during gestation and or lactation. In addition, exposure to 2,000 ppm zinc oxide during gestation, lactation, or post-weaning resulted in alopecia (baldness) and achromotrichia (abnormal hair pigmentation). This effect was thought to be due to copper

deficiency related to excess zinc intake and the effect of the deficiency on melanin biosynthesis pathway.

Exposure of mice to 2,000 ppm zinc oxide (240 mg/kg/day) throughout development (gestation and post-weaning) or lactation and post-weaning has been shown to affect the development of the immune system. This level of exposure resulted in a reduction in the plaque-forming cell response to sheep red blood cells, but did not affect splenic cell surface markers, mitogenic responsiveness, or lymphoid organ size.

These animal studies demonstrate that zinc is a developmental toxicant, but the data are inadequate to establish dose-response curves or no-effect levels. There is no information concerning the potential reproductive toxicity of zinc.

b. *Borate.* The potential reproductive toxicity of borate has been examined on a limited basis in rats and dogs of both sexes. These studies provide evidence that exposure to boron, as borax or boric acid, results in adverse effects to the male and female reproductive system. In the male Sprague-Dawley rat, dietary exposure to 1,000 ppm boron equivalents (50 mg/kg/day) resulted in a significant reduction in fertility, a significant reduction in epididymal weight, and a reduction in sperm number after 30 and 60 days of treatment. A standard reproductive toxicity study revealed total sterility and total lack of viable sperm in the atrophied testes of male rats given 1,170 ppm boron equivalents (59 mg/kg for 6 to 24 months). Exposure of females to 1,170 ppm for 14 weeks prior to mating also caused complete sterility and decreased ovulation.

Two-year chronic feeding studies using hydrated sodium borate and boric acid in rats indicated the testes and ovaries to be the target organs of boric acid toxicity. The No Observed Adverse Effect Level (NOAEL) of this study was equivalent to 26.3 mg/kg/day over the 2-year exposure period. Effects noted at a dose level of 87.8 mg/kg/day include severe atrophy of the testes and a significant decrease in weight of the ovaries.

In the male beagle dog, dietary exposure to 1,170 ppm boron equivalents (29.4 mg/kg) also resulted in severe testicular atrophy and spermatogenic arrest. No adverse effects were observed in the dog following exposure to 350 ppm boron equivalents (8.8 mg/kg) for up to 2 years or in female dogs following exposure to 1,750 ppm boron equivalents (43.8 mg/kg) for up to 90 days.

The data from these animal studies are inadequate to establish dose-response curves, or no effect levels relevant to humans. However, based on the available evidence, ZB-2335 can reasonably be anticipated to cause reproductive toxicity in humans. There is no information concerning the potential developmental toxicity of borate.

IV. Explanation for Proposed Denial

A. General Policy

EPA has broad discretion in determining whether to grant or deny petitions under section 313 of EPCRA. When granting a petition, EPA has an obligation to show how the granting of the petition fulfills the statutory criteria EPA is to use in section 313(d) when modifying the list of toxic chemicals. When denying a petition, EPA must issue an explanation of why the petition is denied.

B. Reasons for Denial

EPA is denying the petition submitted by U.S. Borax Research Corporation to delete ZB-2335 from the EPCRA section 313 list of toxic chemicals. ZB-2335 dissociates in water at environmental pH (pH 6 to 9) to yield both zinc and borate ions. EPA has determined that ZB-2335 can be reasonably anticipated to cause a significant adverse effect on the environment of a sufficient seriousness to warrant continued reporting under EPCRA section 313 because of zinc's high toxicity to aquatic organisms and its tendency to bioaccumulate in the environment.

In addition, ZB-2335 can be reasonably anticipated to cause developmental and reproductive toxicological effects in humans. The effects noted for this chemical are in accordance with the criteria in section 313(d)(2)(B) of EPCRA.

V. Administrative Record

The record supporting this decision is contained in docket control number OPTS-400043. All documents, including an index of the docket are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: March 10, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90-6319 Filed 3-19-90; 8:45 a.m.]

BILLING CODE 6560-50-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 483

[BPD-477-P]

RIN 0938-AD66

Medicare and Medicaid; Charges to Residents' Funds in Nursing Homes

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would protect the personal funds (including personal needs allowances) of residents in skilled nursing facilities (SNFs), intermediate care facilities (ICFs), and intermediate care facilities for the mentally retarded (ICFs/MR) whose care is paid for by Medicare and Medicaid. It would indicate the items and services that are included in program reimbursement and those for which a facility may charge residents. The regulations are required by section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (Pub. L. 95-142), and sections 4201 and 4211 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203).

DATES: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5 p.m. on May 21, 1990.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-477-P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

In commenting, please refer to file code BPD-477-P. Comments received timely will be available for public

inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Samuel W. Kidder, (301) 966–4620.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statute

The Senate Report (Sen. Rep. No. 95–453) that accompanied the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (Pub. L. 95–142) indicated that investigations by the General Accounting Office, the Senate Special Committee on Aging, and various State investigators revealed misuse of residents' personal funds by some nursing homes. One form of abuse involved facilities charging residents for items and services that should be reimbursed by Medicare or Medicaid.

Congress addressed this issue in section 21(b) of Pub. L. 95–142, which set forth a provision regarding the proper use of residents' personal funds by SNFs and ICFs. Specifically, it required the Secretary to issue regulations defining those costs that may be charged to the personal funds of Medicare or Medicaid residents of SNFs and those costs that are to be included in the reasonable cost or reasonable charge for Medicare extended care services or for SNFs and ICFs under Medicaid. At the time this law was enacted, HCFA believed that a combination of existing law, current Medicare and Medicaid regulations, manuals, and policy transmittals that define those services for which a provider will or will not be reimbursed was sufficient to meet the intent of section 21(b). As a result of language in sections 4201 and 4211 in Pub. L. 100–203 (which amend sections 1819(f)(7) and 1919(f)(7) of the Social Security Act (the Act)), it is apparent that more specific regulations implementing section 21(b) need to be promulgated.

B. Regulations

Currently, regulations at 42 CFR 483.10(c)(8) state that, effective October 1, 1990, SNFs in the Medicare program and nursing facilities (NFs) in the Medicaid program may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicare or Medicaid. Medicare regulations at § 405.310(j) exclude personal comfort services (except as necessary for the palliation or management of terminal illness) from Medicare coverage. Therefore a SNF may charge a Medicare beneficiary for these services. Section 489.32 establishes conditions under which a SNF may charge a Medicare beneficiary for providing items and services that are more expensive than or in excess of services covered under Medicare.

Medicaid regulations at § 447.15 prohibit SNFs and ICFs from requiring residents to supplement Medicaid payments for items and services that are covered, except for cost-sharing obligations. These regulations provide that under the State plan, each Medicaid agency must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid to them by the Medicaid agency for items and services furnished to recipients. The Senate Committee on Finance Report No. 744, dated November 14, 1967, stated in part: "Any limitations in supplementation are not intended to preclude additional payments for the reasonable costs or charges for non-standard nursing home services such as telephone, television, etc." Non-standard services are those not included in the State plan. Therefore, SNFs and ICFs are permitted to charge Medicaid residents a reasonable price for non-standard services. Income protected for the personal needs of the recipient in accordance with § 435.725 may be used to pay for these types of charges.

II. Proposed Changes

This regulation would fulfill the requirements imposed by section 21(b) of Pub. L. 95–142, and sections 4201 and 4211 of Pub. L. 100–203. It would require that facilities: (1) notify residents of items and services for which they may be charged if they request them; and (2) not require residents to purchase items or services in order to be admitted or to continue to stay in the facility.

Specifically, we would expand the standard at § 483.10(c)(8), which currently states that, effective October 1, 1990, the facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare. We would change the existing rule by specifying the required and optional services that are reimbursed by Medicare under the SNF benefit and by Medicaid under the NF benefit and are not to be charged to a Medicare beneficiary or Medicaid recipient. We would provide that a facility may charge residents who request more expensive or extra services the difference between what the program reimburses and the cost of the item or service, in accordance with § 489.32.

The expanded standard at § 483.10(c)(8) would also list categories of items that may be charged to residents and, with respect to requested items and services, set forth these requirements:

- The facility must not charge a resident for any item or service not requested by the resident.
- The facility must not require a resident to request any item or service as a condition of admission or continued stay.
- The facility must inform the resident requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

Similarly, we would revise the standards for ICFs/MR at §483.420 to provide that the facility must comply with the same provisions with respect to items or services that may be charged to residents' funds that we propose at § 483.10(c)(8).

Because it would not be administratively feasible to develop and enforce an all-inclusive set of items and services for which payment is made under Medicare or Medicaid at § 483.10(c)(8), we list categories of items and services. We believe that most categories are self-explanatory; however, for purposes of this notice of proposed rulemaking, we have developed the following list to clarify the statement at § 483.10(c)(8)(i)(E). Routine personal hygiene items and services include but are not limited to: shampoo, hair conditioner, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razors, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over-the-counter drugs (such as aspirin, acetaminophen, and cough syrup), nail care, hair cuts, shampoos, bathing, shaving, personal laundry, and incontinence care.

We invite comments on this issue both with respect to whether there should be a specific regulatory listing of items and services such as the one provided above and as to whether this category should be expanded or limited. We are aware that there are additional items and services that many believe should be available to residents without charge. These include a variety of medical items and services such as

prescription drugs and eyeglasses. We have limited the items and services that may not be charged to residents to routine personal hygiene items, including personal laundry, and services reimbursed under the Medicare and Medicaid programs, but we invite public comments as to whether personal laundry and other services should be paid for by the resident.

Compliance with the requirements of this proposed rule would be reviewed as part of the survey and certification process. Therefore, noncompliance could affect continued facility participation in Medicare and Medicaid.

This proposed rule will affect State plans under the Medicaid program. Pub. L. 100–203 eliminated coverage of SNF and ICF care (except for ICFs/MR), and replaced it with mandatory coverage of NF care effective October 1, 1990. We are developing a separate notice of proposed rulemaking to implement this change and others required by Pub. L. 100–203. That notice will propose to define "nursing facility services" as including the items and services identified at § 483.10(c)(8)(i). Therefore, when that proposed rule is made final, States will be compelled to cover the items and services at § 483.10(c)(8)(i) under their State plans as nursing facility services.

Upon finalizing this proposed rule, we will issue a revised State plan preprint to implement the final requirements that apply to the Medicaid program. States will have 90 days from receipt of the preprint to submit their State plan changes and required attachments to the appropriate HCFA regional offices.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule such as this that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule is not a major rule under E.O. 12291 criteria, and an initial regulatory impact analysis is not required

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all SNFs, ICFs, and ICFs/MR are treated as small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

This proposed rule could have an economic effect on Medicare SNFs, Medicaid SNFs and ICFs (NFs after October 1, 1990), and ICFs/MR. Their costs would depend upon the extent to which they currently conform to the proposed requirements. Although we do not have this information available to us, we believe that the cost to individual long-term care facilities and long-term care facilities in the aggregate would not be significant.

Thus, we have not prepared an initial regulatory flexibility analysis, and the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Furthermore, we have not prepared a rural impact statement because this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

IV. Information Collection Requirements

This rule contains no information collection requirements, therefore the rule does not come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR part 483 would be amended as set forth below:

PART 483—CONDITIONS OF PARTICIPATION AND REQUIREMENTS FOR LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Sec. 1102, 1819 (a)–(d), 1831 (j) and (1), 1863, 1871, 1902(a)(28), 1905 (a) and (c), and 1919 (a)–(d) of the Social Security Act (42 U.S.C. 1302, 1395(i)(3) (a)–(d), 1395x (j) and (1), 1395hh, 1396a(a)(28), and 1396d(c) and 1396r (a)–(d)), unless otherwise noted.

Subpart B—Requirements for Long Term Care Facilities

2. In § 483.10, paragraph (c)(8) is revised to read as follows:

§ 483.10 Level A requirement: Resident rights.

* * * * *

(c) *Level B requirement: Protection of resident funds.* * * *

(8) *Limitation on charges to personal funds.* The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with § 489.32 of this chapter.

(i) *Services included in Medicare or Medicaid payment.* During the course of a covered Medicare or Medicaid stay, the facilities may not charge a resident for the following items and services:

(A) Nursing services and specialized rehabilitative services.

(B) Dietary services.

(C) An activities program.

(D) Room/bed maintenance services.

(E) Routine personal hygiene items and services.

(ii) *Optional covered items and services.* A facility may choose to provide residents with supplies, equipment, and transportation essential to the activities program required by § 483.15(f), which describes the activities program a facility must provide for its residents in order to meet the Level B requirement for quality of life. If it chooses to provide these items

and services, they are included as covered Medicare or Medicaid services and are reimbursed under those program benefits. No charges may be made to residents for those services.

(iii) *Items and services that may be charged to residents' funds.* Listed below are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident and payment is not made by Medicare or Medicaid:

(A) Telephone.

(B) Television/radio for personal use.

(C) Personal comfort items, including smoking materials, notions and novelties, and confections.

(D) Cosmetic and grooming items and services, in excess of those for which payment is made under Medicaid or Medicare.

(E) Personal clothing.

(F) Personal reading matter.

(G) Gifts purchased on behalf of a resident.

(H) Flowers and plants.

(I) Social events and entertainment offered off the premises and outside the scope of the activities program, provided under § 483.15(f).

(J) Noncovered special care services such as private duty nurses.

(K) Private room, except when therapeutically required (for example, isolation for infection control).

(L) Specially prepared or alternative food requested instead of the food generally prepared by the facility, as required by § 483.35, if it is documented that the requested food costs more than the food provided to other residents.

(iv) *Requests for items and services.* (A) The facility must not charge a resident (or his or her representative) for any item or service not requested by the resident.

(B) The facility must not require a resident (or his or her representative) to request any item or service as a condition of admission or continued stay.

(C) The facility must inform the resident (or his or her representative) requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

* * * * *

Subpart D—Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

3. In § 483.420(b)(1), the introductory language is republished and a new paragraph (b)(1)(iii) is added to read as follows:

§ 483.420 Condition of participation: Client protections.

* * * * *

(b) *Standard: Client finances.* (1) The facility must establish and maintain a system that—

* * * * *

(iii) Complies with the provisions of § 483.10(c)(8) with respect to items or services that may be charged to residents' funds.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance, and No. 13.714, Medical Assistance Program)

Dated: July 7, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: November 3, 1989.

Louis W. Sullivan,

Secretary.

Note: This document is being submitted to the Office of the Federal Register today, March 13, 1990 for publication.

Charlotte E. Lewis

[FR Doc. 90-6130 Filed 3-19-90; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 515, 525, 530, 560, and 572

[Docket No. 90-06]

Marine Terminal Operator Regulations; Extension of Comment Period

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry; extension of comment period.

SUMMARY: The Federal Maritime Commission ("Commission") adopted certain recommendations of the Report of Fact Finding Officer in Fact Finding Investigation No. 17, Rates, Charges and Services Provided at Marine Terminal Facilities ("FF-17"). The Notice of Inquiry, published February 16, 1990 (55 FR 5626), initiated an inquiry to solicit public comment on a potential restructuring of the Commission's marine terminal operator regulations in the areas identified in FF-17 as warranting revision. The comments received will assist the Commission in proposing an appropriate rule to update its regulations in this area. Comments are now due April 17, 1990. The National Association of Stevedores ("NAS") has requested that the time for filing comments be enlarged by 60 days. NAS says the additional time is needed to provide time for member companies, who represent the "vast majority" of private marine terminal operators, to discuss the issues, formulate an industry or individual response and submit comments to the Commission. NAS cites the diversity of its membership and says that the additional time should result in better reasoned and more complete comments.

The report of the Fact-Finding Officer in FF-17 was made public more than a year ago. However, this proceeding would have substantial impact on the marine terminal industry, and there appears to be good cause to grant a 30 day extension. Accordingly, this notice extends the time for filing comments to the Notice of Inquiry to May 17, 1990.

DATES: Comments due May 17, 1990.

ADDRESSES: Comments (original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5796.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-6281 Filed 3-19-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-123, RM-7032]

Radio Broadcasting Services; De Ridder, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by West Central Broadcasting Co., Inc., licensee of Station KROK(FM), Channel 221A, De Ridder, Louisiana, proposing the substitution of Channel 221C3 for Channel 221A at De Ridder and the modification of Station KROK(FM)'s license to specify operation on Channel 221C3. The community could receive its first wide coverage area FM service. A site restriction of 14.6 kilometers (9.1 miles) southwest of the community is required at coordinates 30-46-30 and 93-25-00.

DATES: Comments must be filed on or before May 4, 1990, and reply comments on or before May 21, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James J. Popham, Esq., Attorney at Law, 4410 Greenwich Parkway, NW., Washington, DC 20007 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–123, adopted February 23, 1990, and released March 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–6237 Filed 3–19–90; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 90–122, RM–7075]

Radio Broadcasting Services; Coeburn, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Preston L. Salyer, permittee of Station WZQK(FM), Channel 259A, Coeburn, Virginia, proposing the substitution of Channel 259C3 for Channel 259A at Coeburn, and the modification of Station WZQK(FM)'s construction permit to specify the higher class channel. A site restriction of 18.1 kilometers (11.2 miles) northwest of the city is required. The coordinates are 37–02–56 and 82–37–35.

DATES: Comments must be filed on or before May 4, 1990, and reply comments on or before May 21, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: B. Jay Baraff, Esquire, Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 700, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–122, adopted February 23, 1990, and released March 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–6238 Filed 3–19–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

RIN 0648–AD07

[Docket No. 90778–0061]

Endangered and Threatened Species; Winter-run Chinook Salmon

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is proposing to list the winter-run chinook salmon in the Sacramento River, California as a threatened species under the Endangered Species Act (ESA) of 1972. An emergency rule (published August 4, 1989) listing the species as threatened will expire April 2, 1990. Prohibitions and exceptions are included in the proposed rule. Critical habitat will be designated in a separate action.

DATES: Comments on the proposed rule must be received by May 21, 1990. Requests for public hearings must be received by May 4, 1990.

ADDRESSES: Comments should be sent to E. Charles Fullerton, Regional Director, National Marine Fisheries Service, Southwest Region, 300 S. Ferry Street, Terminal Island, CA, 90731.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Protected Species Management Branch, 300 S. Ferry Street, Los Angeles, CA 90731, (213) 514–6664 or FTS 795–6664 or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 10910, (301) 427–2322.

SUPPLEMENTARY INFORMATION:

Background

Winter-run chinook salmon are a unique population of chinook salmon in the Sacramento River and are distinguishable from the other runs in the River based on timing of their upstream migration and spawning season. For the most part, the winter run population comprises three year classes each of which return to spawn as 3-year-old fish. The best measure of trends in

abundance of winter-run is a series of counts of run size conducted by the California Department of Fish and Game (CDFG) at Red Bluff Diversion Dam.

The CDFG began conducting these counts in 1966, the year that the Dam was placed into operation. These counts show a persistent decline in run size from a 3-year average of about 84,000 fish for the years 1967 through 1969 to a 3-year average of about 2,000 fish for the years 1982 through 1984 (see Table 1).

On November 7, 1985, NMFS received a petition from the American Fisheries Society (AFS) to list the winter-run of chinook salmon in the Sacramento River as a threatened species under the Endangered Species Act of 1973 (ESA). NMFS reviewed the petition and determined that it contained substantial information indicating that the petitioned action might be warranted. On February 13, 1986, NMFS announced (51 FR 5391) its intention to conduct a review of the status of the run to determine whether or not listing the run was appropriate.

The status review was based on a consideration of available information on the run relative to the five criteria specified in section 4(a)(1) of the ESA and a consideration of the conservation efforts of the State of California and Federal resource management agencies to restore the run, as required by section 4(b)(1)(A) of the ESA. Information was provided by the petitioner, the State, Federal agencies that affect the run or its habitat, and the public. The results of the status review, along with the Notice of Determination, were published on February 27, 1987 (52 FR 6041).

In the Notice of Determination, NMFS concluded that the Sacramento River winter-run chinook was a species in the context of the ESA and recognized that the run had declined by more than 97 percent over a period of less than two decades. The definable causal agents in this decline were the construction and operation of the Red Bluff Dam, adverse temperature conditions created by the operation of Shasta Dam (particularly in dry years), and other human activities that had collectively degraded spawning and rearing habitat in the Sacramento River to the point that productivity of the run declined.

Based on its assessment that restoration and conservation efforts being implemented or planned by State and Federal resource management agencies adequately provided for the rebuilding of the population, NMFS decided not to list winter-run chinook in the Sacramento River as a threatened species under the ESA. After this determination, these restoration actions were incorporated in a Ten-point Winter-run Restoration Plan and implemented by means of a Cooperative Agreement signed on May 20, 1988, by the CDFG, the Bureau of Reclamation (BR), the Fish and Wildlife Service (FWS), and NMFS. The Restoration Plan is reviewed in NMFS' original decision not to list the run (52 FR 6041) and again after a reconsideration of that decision (53 FR 49722). Among the ten points, the tasks expected to be of most immediate benefit to winter-run are raising the gates at Red Bluff Dam from December 1 through April 1 to allow free passage of adult winter-run to suitable spawning habitat and maintaining water temperatures at levels below lethal limits in the reach of river above the Dam that is used for spawning. Other points in the plan that are expected to benefit the run in the near future are a propagation program at the FWS' Coleman Hatchery and several studies to quantify and identify mitigation options for other activities affecting the run.

In the spring of 1988, prevailing weather patterns indicated that the drought conditions that had developed in the spring and summer of 1987 would persist through 1988. These conditions caused concern among the resource agencies that the conservation measures in place to enhance the run might not be adequate to address the adverse effect of anticipated drought conditions. Specifically, water forecasts indicated that river temperatures might reach levels lethal to developing winter-run eggs. NMFS decided to review its decision not to list the run and to evaluate the adequacy of the Ten-point Winter-run Restoration Plan for protecting the run during drought conditions.

On June 2, 1988, NMFS announced its intent to reconsider its decision to not list the run and opened a public comment period to ensure that all information on the status of the run and factors affecting it was available for the reconsideration (53 FR 20155).

Based on the information considered during the review, NMFS found that the status of the winter-run population had not deteriorated since its original determination not to list the run as threatened; none of the comments received during the reconsideration provided substantial new information indicating listing was necessary; the Ten Point Winter-run Restoration Plan was being implemented; and unprecedented actions were being carried out to minimize the adverse effects of the drought.

On December 9, 1988, NMFS reaffirmed its determination that the actions of State and Federal agencies to restore the winter-run chinook salmon population and its habitat adequately addressed the threats to the population and that the population was not likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future. Therefore, listing was not considered appropriate at that time (53 FR 49722).

Simultaneous with NMFS' review of the status of the winter-run population, the CDFG was conducting an independent review pursuant to a petition for listing the run under the State's Endangered Species Act. The CDFG concluded its review in February 1989, and recommended to the California Fish and Game Commission that the run not be listed because the restoration actions underway or planned for the future had a high probability of restoring the run (CDFG undated status review). Precipitation and runoff were again below normal for the water-year beginning October 1988. In February 1989, the BR announced cuts of up to 50 percent in water supply for central valley project water contractors because of the persistence of dry conditions. Heavy precipitation in March 1989, in the northern Sacramento River drainage basin restored Lake Shasta storage equal to the storage in October 1987. As a result of the heavy March rains, the BR was able to increase water supplies to contractors and maintain sufficient storage to manage water temperatures in the river. The BR was also able to leave the gates at Red Bluff Diversion Dam out of the water two weeks beyond the April 1 deadline agreed to in the Cooperative Agreement. This provided an additional two weeks of unrestricted access for returning winter-run to suitable spawning habitat, but lower than expected returns of winter-run were in the river to benefit from this additional period of unrestricted passage.

For undetermined reasons, the 1989 run returned at much lower levels than expected. The CDFG estimated run size for 1989 was about 550 fish, roughly 75 percent below the expected run size. Since 1982, the run has varied at about a mean run size of 2,382 fish, and resource agencies had expected the 1989 run to be near that level.

Based on the poor return of fish in 1989 and because the U.S. Fish and Wildlife Service's hatchery program (a task in the Ten-point Winter-run Restoration Plan) for augmenting natural production was still developmental and not likely to produce substantial numbers of juvenile fish for several years, the CDFG reversed its position and recommended at the May 1989

meeting of the California Fish and Game Commission that the Commission list the winter run as a threatened species under the California Endangered Species Act. The Commission considered the CDFG staff's recommendation, but voted to list the run as endangered under state law. The run was listed as endangered under State law in August 1989.

NMFS also believed that the 1989 run size was dangerously low. NMFS has estimated that a run size of between 400 and 1,000 fish is necessary to maintain genetic diversity in the winter-run population (52 FR 6041). If such poor returns occur for the remaining two year classes in the population, NMFS believes the population will begin losing genetic diversity through genetic drift and inbreeding. Further, a small population is vulnerable to major losses from random environmental events such as droughts and El Nino events. NMFS expects that the 1987 and 1988 year classes, which are currently in the ocean, benefited from the Ten-point Winter-run Restoration Plan and believes that the winter-run is not currently in danger of extinction. Nevertheless, the run is likely to become endangered in the foreseeable future if action is not taken to ensure that conditions are maintained in the river for maximum production from the fish that successfully spawn. Therefore, NMFS is proposing to list winter-run chinook salmon in the Sacramento River as a threatened species under the ESA.

TABLE 1.—ANNUAL ESTIMATED RUN SIZE AT RED BLUFF DIVERSION DAM

Year	Number of fish
1967	57,306
1968	84,414
1969	117,808
1970	40,409
1971	53,089
1972	37,133
1973	24,079
1974	21,897
1975	23,430
1976	35,096
1977	17,214
1978	24,862
1979	2,364
1980	1,156
1981	20,041
1982	1,242
1983	1,831
1984	2,663
1985	3,962
1986	2,422
1987	2,236
1988	2,085
1989	550

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA specifies five criteria to be evaluated in reviewing the status of a species or population proposed for listing. These criteria were reviewed in the first Notice of Determination published February 27, 1987 (52 FR 6041), and again in the subsequent Notice of Determination published December 9, 1988 (53 FR 49722). The criteria for evaluating the status of the run are reviewed again to present a complete document that contains current information.

1. The present or threatened destruction, modification, or curtailment of its habitat or range.

Modification and loss of spawning and rearing habitat probably have been major factors contributing to the decline of the winter run. Essential elements of suitable spawning habitat are the availability of clean gravel which provides a substrate for redd (nest) construction, adequate flow of oxygenated water through the gravel to aerate the eggs, and water temperatures between 42.5 and 57.5 °F which are optimal for egg development (Combs and Burrows 1957). Although, studies reviewed in a literature survey conducted by the California Department of Water Resources indicate that the optimum range of temperatures for development through the emerged fry stage may be bound by 55 °F on the upper end (Seymour 1956 cited in Boles 1988). Historically, winter-run chinook found and used this type of habitat in the cold spring-fed headwaters of the tributaries to the Sacramento River. For example, they were reported to have spawned in the McCloud River before access to that river was blocked by the construction of Shasta Dam (Slater 1963).

Shasta and Keswick Dams

In the 1940s, the BR initiated its Central Valley Project with the construction of Shasta and Keswick Dams on the Sacramento River. These dams blocked access to the winter-run's spawning habitat, but simultaneously created new habitat by releasing cold hypolimnitic waters into the main stem of the Sacramento River. During the late spring and summer when the winter-run chinook are spawning, the cold water released from Shasta and Keswick Dams provides adequate spawning habitat downstream to about Red Bluff in most normal water years. During dry years, when releases from Shasta are not as cold and river water warms more quickly, suitable spawning conditions exist only in a restricted area downstream from Keswick Dam. The design of the Shasta Dam spill gates and intake to the powerhouse penstocks contributes to this problem. As the Shasta Lake is depleted, in dry years, the thermocline falls below the intake to the powerhouse, and no mechanism exists for releasing cold deep water unless hydropower is not generated. When power is generated, warm surface water is withdrawn for power generation and released into the river where it adversely affects spawning habitat.

In March 1988, the Central Valley Regional Water Quality Control Board, issued Order No. 88-043, imposing waste discharge requirements (including temperature) on the BR's Shasta-Trinity River Division operation. The Order prescribes maintenance of Sacramento River temperatures of not more than 56 °F between Keswick Dam and Hamilton City (approximately 30 miles downstream from Red Bluff) to protect fishery resources. This is the first time that specific, enforceable temperature standards have been imposed. The Order cited evidence that future BR Central Valley Project operations would cause water temperatures of Shasta Dam discharges to increase and "* * * typically exceed 56° F" during the period of winter-run spawning and rearing. The BR opposed the order and is currently appealing the decision on jurisdictional grounds. They are urging, instead, the use of non-binding, voluntary agreements (such as the May 20, 1988 cooperative agreement) to achieve similar ends such as they have done each year since 1987. On December 8, 1989, the Regional Board rescinded the order, and on January 8, 1990, the State Water Resources Control Board announced its intent to address the issue using its water right authority.

In May 1987, the fishery agencies expressed to BR their concern over predicted lethal temperatures below Keswick and estimates of substantial mortality of the 1987 winter-run year class. The BR responded with a water management strategy to lower river temperatures that included opening, for the first time since the Dam was constructed, a low-level outlet in Shasta Dam that draws deep, cold water. This low-level release contributed to maintaining an average river temperature of 57.5 °F from August 27, 1987 to September 10, 1987. An assessment of the benefits of this and other actions taken to protect the 1987 winter run must wait until 1990 when the progeny of the 1987 run return from sea to spawn.

With the drought conditions persisting into 1988, the BR again agreed to open the low level release, at the expense of power generation, to maintain suitable river temperatures. Even employing these extraordinary measures, the BR was only able to maintain suitable spawning and incubation conditions downstream to Cottonwood Creek, about 20 river miles upstream from Red Bluff. The BR also made low level releases in 1989 to protect winter-run spawning habitat.

The BR is committed to constructing a permanent temperature control device at Shasta Dam that will allow water to be drawn into the power penstocks from varying levels in the lake. This will allow better control of river temperatures without foregoing the opportunity to generate power from the water released through the dam.

Spawning habitat has also been degrated by decreases in the rate of replenishment of gravel suitable for spawning. Construction of Shasta and Keswick Dams precluded the recruitment of new gravel from the river and its tributaries above those dams, and gravel mining in the tributaries streams below those dams has slowed the recruitment of new gravel into the Sacramento (CDWR 1980). Consequently, the amount of suitable spawning habitat has been shrinking. In 1985, the CDFG began a spawning gravel replenishment program. The CDFG and the BR are purchasing gravel and the CDFG is placing it in the river to restore degraded spawning riffles in areas of the river used by the winter run. In addition to replenishing spawning riffles, the CDFG is working with the California Department of Water Resources to modify gravel mining permits to ensure gravel of an appropriate size for salmon spawning habitat is left in the river bed for natural distribution to the main stem or that it be made available for transport to areas where it may be used to restore degraded spawning habitat.

Red Bluff Diversion Dam (RBDD)

An equally important problem has been the impediment that the RBDD presents to upstream migrant salmon. The RBDD was built to provide a head of water for diversion to farm lands and wildlife refuges in the northern portion of California's Central Valley. It began operating in August 1966. The dam was designed with fish ladders to allow passage to upstream migrants, but these are not adequate particularly during high flows that occur in the winter when winter-run are migrating upstream. Hallock et al. (1982) and Vogel et al. (1988) investigated the effect of the dam on upstream migrants and found that nearly 40 percent of tagged upstream migrants were blocked by the RBDD. Fish that are blocked spawn downstream from RBDD where river temperatures commonly exceed 57.5 °F causing almost a total mortality of incubating eggs. In addition, the physiological stress associated with delays and repeated attempts to get past the dam may contribute to reduced fecundity of fish that do get past the dam and spawn in suitable habitat.

At the recommendation of the fishery resource agencies, the BR agreed to an experimental period during which the gates at RBDD would be raised (opened) between December 1 and April 1 with the understanding that the gates may have to be lowered (closed) to deliver water for irrigation or maintenance of canals. The period of migration of the four chinook runs past RBDD has been characterized by averaging the cumulative number of fish that passed RBDD during the years 1971 through 1982. Based on these data, raising the gates through April 1 should allow about 66 percent of the winter run free access to its spawning habitat.

From December 1 to April 1, 1986–87, the gates were raised for a period of 94 days. The FWS conducted a study of fish passage during the period the gates were opened. The results of that study showed that 11 radio tagged salmon were delayed an average of 3.19 hours or 28 times less than when the gates were down. Also, none of the tagged salmon that approached the dam, while the gates were raised, backed downstream away from the dam (FWS 1987). During the 1986–87 winter, about 95 percent spawned above RBDD, indicating that raising the gates was relatively effective in improving passage of the winter-run.

The BR has continued this operational procedure in subsequent winters. During the winter of 1987–88, the gates were raised for 68 consecutive days before being lowered to provide irrigation water to the Tehama-Colusa Canal users. Eighty four percent of the run spawned above RBDD in 1988. During the winters of 1988–89, the BR was able to keep the gates up a longer period, and CDFG estimated that 97.8 percent of the run spawned upstream from RBDD.

The FWS has recommended that the BR construct new state-of-the-art fish passage facilities at RBDD that would resolve fish passage problems, and would continue to allow the dam to operate during the winter. The BR is evaluating alternatives for new fish passage facilities, and has agreed to continue the practice of raising the gates during the winter until new passage facilities are in place.

The RBDD and its associated diversion facilities also have had an adverse effect on migrating winter-run salmon downstream from the dam. The Tehama-Colusa Canal (TCC), which diverts Sacramento River water at RBDD, does not have an efficient fish screening facility. As a result, outmigrating juvenile salmon and fry have been entrained and lost. Although the effect of this mortality on the winter-run population has not been specifically quantified, studies by the FWS (Vogel et al. 1988) indicate that an estimated 3.9 percent of the outmigrating juvenile winter run are lost at these screens. As part of the BR's efforts to improve operation of the RBDD and the TCC, and to mitigate impacts to fish populations, the BR is constructing a new fish screen and bypass system at the TCC. The design and placement of the new fish screens was developed in consultation with NMFS, FWS, and the CDFG. These screens are a state-of-the-art design and should minimize the effect of entrainment on winter run. The construction schedule is designed to "phase in" the new screens so that there will be fish protection at all times. Work on the new screens begin in August 1988 and will be complete in fall 1990. Validation studies will be conducted to ensure the screens are as efficient as planned.

Additional Water Marketing

The BR has expressed its intent to market an additional 1.1 million acre-feet of water from the Central Valley Project (CVP). All of the fishery agencies have warned the BR that there is no water available from the Trinity River side of the system because it is committed for fishery flows under a 1980 decision by Secretary of the Interior. Further, because the State of California is currently undergoing a three-year review and modification of water rights (known as the Bay-Delta Water Rights Hearings) in the Sacramento/San Joaquin-Trinity River systems, NMFS believes that the marketing effort is premature. Although the BR is still preparing an Environmental Impact Statement on their marketing plan, the BR has stated that they could not go forward until the State Water Resources Control Board had rendered its final water rights finding. If the additional water is marketed, it will likely exacerbate the problem of maintaining suitable temperatures throughout the spawning habitat now judged to be suitable for winter-run.

Anderson Cottonwood Irrigation District Diversion Dam

The Anderson-Cottonwood Irrigation District (ACID) Diversion Dam is an antiquated structure built in 1917. The gates consist of a series of flash boards that are put in place and manipulated manually. Generally, the dam is operational from mid-March to mid-April, thus the flash boards are not in place during the early part of the winter-run's upstream migration and about 40 percent of the run should pass the dam prior to March 15. There is a fish ladder at the dam, but it is inadequate to facilitate passage of all the salmon that encounter the dam. This excludes some fish from existing spawning habitat above the dam (USBR 1983). Blockage at this dam is not as severe a problem as blockage at the RBDD because suitable spawning habitat exists below it. Consequently, the problem has not been fully investigated, and the effect of the blockage on the population remains unquantified.

The seasonal operation of the ACID dam creates a second problem. When salmon migrate past the dam before it is put into operation and spawn immediately upstream, the small reservoir created by the dam when is put into operation covers the salmon redds (spawning grounds). This reduces the flow of aerated water over the edge and may reduce their survival. The effect of this problem on winter run also has not been quantified.

A third problem is created by the operational and structural limitations of the ACID dam. The flash boards can be manipulated in flows of 6,000 cubic feet per second (cfs) or less, and they can withstand flows of no more than 12,000 cfs. Because of these limitations, the operations of ACID and Keswick dams are coordinated through an informal agreement between the BR and the ACID. Any time the flash boards have to be manipulated, the BR reduces the flow in the river to 6,000 cfs by reducing the releases from Keswick. When releases from Keswick must exceed 12,000 cfs, the BR first reduces the flows to 6,000 cfs so the flash boards may be configured appropriately, and the flow is increased to the necessary level. These fluctuating flows adversely affect the run by dewatering redds that were constructed at high flows, reducing the flow of aerated water through the redds to inadequate levels, and stranding juvenile fish. Since the winter-run spawning season is encompassed by the irrigation season, it is likely that this problem has an adverse effect on the run.

In 1987, the BR and ACID modified their operations to minimize the need for in season adjustments to the ACID dam, thereby reducing the magnitude of this probelm. In January 1989, the ACID, CDFG, NMFS, BR, and the CDWR met to discuss options for improving the dam. The preferred solution is to redesign and modernize the existing dam with adequate ladders and gates that would eliminate the flow problems, but other alternatives including relocation of the dam will be considered. In the interim, CDFG is pursuing temporary remedies such as a temporary ladder in the dam to improve passage.

Pollution

Pollution also has degraded the spawning habitat of the winter run. Runoff from inactive mining operations at Iron Mountain Mines in the vicinity of Spring Creek, a tributary to the upper Sacramento, leaches heavy metals which can reach levels that are lethal to juvenile fish, alevins, and eggs. A debris dam was constructed on Spring Creek in the 1940s to collect debris eroded from the mine sites and to control the release of toxic water into the mainstem of the Sacramento River. Under normal conditions, releases from Spring Creek Dam are diluted by releases from Keswick Dam so that concentrations of heavy metals in the Sacramento remain below toxic levels. However, during years of heavy precipitation, spills from Spring Creek Reservoir result in uncontrolled releases of toxic water. Generally, this occurs in the winter when fall-run chinook alevins are hatching and fry are emerging from the gravel. These are the life stages most sensitive to pollution, and large kills of these life stages have been attributed to spills of toxic water. Winter-run adults are subjected to these spills, and, while kills of adult fish have not been reported, sublethal effects such as reduced fecundity are probable.

The Environmental Protection Agency (EPA) has placed the site on its Superfund Priority List, and they have completed a Remedial Investigation/Feasibility Study of the problem. EPA has identified a combination of source control, treatment, and water management as the most cost effective remedial solution. EPA and BR have drafted an Agreement to implement actions to resolve the Spring Creek toxicity. Under this Agreement, EPA will fund activities through its Superfund Program. The EPA will be the managing agency. The BR will be responsible for design and construction of the water management components that protect most of the Spring Creek Basin drainage from being contaminated and will reduce the possibility of a spill from Spring Creek Reservoir. Implementation of this Plan is estimated to cost about $70 million. Only a few feasibility investigations of source control methods have been conducted although several of the water management solutions are in the planning phase.

Hydroelectric Projects

The Federal Energy Regulatory Commission (FERC) is considering licensing applications for two hydroelectric projects which, if authorized, would adversely affect the winter run. These are the Lake Redding Project and the Lake Red Bluff Project which was recently reactivated by the FERC. If built, these projects would result in loss of winter-run habitat and aggravated fish passage problems. Section 18 of the Federal Power Act (16 U.S.C. 791 *et seq.*) grants NMFS authority to prescribe standards for fish passage. These standards must be met before the projects can be authorized. These provisions combined with FERC's responsibilities under Section 7 of the ESA will ensure that no new threats to the winter-run population will be allowed to develop as a result of hydroelectric projects on the upper Sacramento River.

Bank Stabilization

Much of the Sacramento has been riprapped, leveed, or otherwise channeled to prevent erosion of agricultural lands and contain flood waters. Studies of bank protection projects in the upper Sacramento River have demonstrated that juvenile salmon show a marked preference for areas that have not been stablized (Schaffter et al. 1983, Michny and Hampton 1984). Therefore, bank stabilization may affect the quality of rearing habitat. The COE and the FWS are cooperating in the investigation of methods to restore riparian habitat on stabilized banks so that the quality of the habitat for rearing fish can be maintained.

2. Overutilization for Commercial, Recreational, Scientific or Educational Purposes.

Winter-run chinook are probably subjected to a harvest rate that is less than that for the other three races of chinook in the Sacramento River. This belief is based on two observations. First, the separation in timing of the adult spawning migration from the ocean between the winter run and the fall run (the target run for the ocean fishery) is almost complete. Consequently, winter-run fish are not available to the ocean fishery for as long as the fall run. This should contribute to

a lower harvest rate. Second, winter-run chinook return to the Sacramento River at a younger age and at a smaller size than the other three runs. According to Hallock and Fisher (1985), winter-run chinook mature almost exclusively as two and three year old fish. Age composition of a typical run is 25 percent 2-year-olds, 67 percent 3-year-olds, and 8 percent 4-year-olds; whereas fall-run chinook tend to mature somewhat later. Since fall run return at an older age, they are generally larger. This indicates that the winter-run chinook are available to the ocean sport and commercial fisheries for a shorter period of time than the other runs, and receive greater protection from the size limits imposed by the Pacific Fishery Management Council (PFMC).

Ocean fishing regulations limit chinook caught by sport fishermen to 20 inches or greater, and 26 inches or greater for commercially caught chinook. Since winter-run chinook return at a smaller size, they are more available to the sport fishery than the commercial fishery. This explains why the ocean sport fishery catches 71 percent of the ocean harvest of winter-run chinook and the catch consists of mostly 2-year old fish. The commercial fishery is responsible for about 29 percent of the ocean catch of winter-run chinook and their catch consists mostly of 3-year old fish.

Hallock and Fisher (1985) report the percentage of chinook that were scarred by hooks and released by the ocean fishery. Hook scars occur when fish under legal size limits are released alive. Of the fish examined at the trapping facility at the RBDD, the spring, fall, and late-fall runs experienced 38 percent greater hook-scarring than the winter run. Hook-scarring cannot easily be used to infer harvest rates or even "shaker mortality" (associated with the release of under-sized fish), but it does show a reduced interaction between the winter run and the ocean fisheries.

Nearly all data about the time, growth, distribution, and mortality of salmon in the ocean come from tagging experiments at hatcheries using coded wire tags (cwt). Since winter run chinook spawn naturally, they have not been included in studies using coded wire tags. However, Hallock and Fisher (1985) report a marking study, conducted in 1969–71, in which juveniles from three brood stocks were seined from the Sacramento River, fin clipped, and released. Recoveries of the adults from these releases were tabulated and estimates made of age at harvest and harvest rate. Their results confirmed that winter-run chinook mature almost exclusively as two and three year olds and produce an estimated catch to escapement ratio of 0.53:1.0 and an ocean harvest rate of 34.6 percent.

These are likely conservative estimates because a duplicate mark was used unintentionally in other California and Oregon chinook studies during the same period. Consequently, the mark returns in the ocean fishery that were attributed to the Sacramento River winter run were too high by some unknown amount. Also the harvest rate for winter-run has likely declined since the study was completed, because ocean fishing regulations are currently more restrictive than they were during the early 1970s. The effect of each of these factors is an over estimation of the ocean harvest of winter run.

Data on inland sport harvest of adult winter-run chinook are scarce: estimates are available from 1968–1973 and 1975. Hallock and Fisher (1985) report data for these years that show Sacramento River sport harvest rates for winter-run chinook averaging 8.5% of the in-river harvest.

Hallock and Fisher (1985) reported that 85% of the total catch of winter-run chinook from the 1969–71 broods were caught in the ocean and 15% were caught in the river. Based on the data discussed above, they estimated the total catch to escapement ratio was 0.58:1.0 and a total harvest rate of 38%.

The harvest rate of winter-run chinook is substantially below that managed for any other chinook stock on the Pacific coast. The PFMC reports an index of ocean fishery harvest rates south of Point Arena for California Central Valley chinook. The 16-year average for the index is 64%. The CDFG (L.B. Boydstun, CDFG, personal communication) estimates that the total harvest rate for these stocks (including areas north of Point Arena) is about 30% greater than that reported in the index or about 82%. This represents a catch to escapement ratio greater than 4:1. In Washington State where, in addition to conservation management, the ocean fishery is restricted to achieve court-ordered allocations of chinook to inside Indian fisheries, the ocean catch to escapement ratio are managed between 2:1 and 1:1 (J. Coon, PFMC staff, Personal communication).

NMFS believes that any stock (even a marginally healthy one) should be able to maintain stable population levels and even growth at the moderate harvest levels to which winter-run chinook have been subjected and that harvests have not been instrumental in the decline of winter-run chinook in the Sacramento River. Nevertheless, in 1987 the CDFG implemented seasonal closures in the upper Sacramento and a quota of 175 fish and began monitoring the catch. The estimated take was 26 fish in 1987 and 91 in 1988. After the poor return of winter run in 1989, the CDFG has implemented even more restrictive sport fishing measures in the river and the ocean adjacent to the Golden Gate. NMFS agrees that these measures are prudent and necessary to maximize the probability that the adults that survive and return to the spawning grounds have the opportunity to spawn.

3. Disease or Predation.

The magnitude and extent of predation throughout the Sacramento River has not been determined. However, observations indicate substantial predation may occur at certain locations. For example, losses of fall-run salmon to predation can be significant at RBDD (Vogel et al. 1988 and Hall 1977 cited in Garcia 1989). In addition, there is a potential for high levels of predation at the Glenn-Colusa Irrigation District diversion facility near Hamilton City. Squawfish and striped bass have been observed preying on salmonids salvaged from Sacramento-San Joaquin Delta diversions. Garcia (1989) reviewed the impacts of squawfish predation on juvenile chinook salmon at RBDD and other locations in the Sacramento River. Although the potential for a substantial loss of winter-run juveniles exists at RBDD, Garcia concluded that because information on the timing of the winter-run downsteam migration and the biology of the squawfish were lacking, impacts could not be quantified.

NMFS has funded an experimental fishery for squawfish in the vicinity of RBDD. Although squawfish may be catchable in commerical quantities and development of the fishery would likely reduce impacts of predation, recent analysis of squawfish flesh has shown dioxin contamination from paper mills on tributary streams. Consequently, squawfish may not be sold for human consumption.

4. The Inadequacy of Existing Regulatory Mechanisms.

Relevant laws that comprise the existing regulatory mechanisms were listed in the Notice of Determination (52 FR 6041) and described as providing adequate mechanisms for restoring the winter run in the Sacramento River. However, the decline in the size of the run since the late 1960s indicates that these regulatory mechanisms were not applied effectively with respect to the winter run. NMFS now believes the ESA is needed to augment and enhance the

effectiveness of the existing regulatory mechanisms.

5. Other Natural or Manmade Factors Affecting the Continued Existence of the Species.

In addition to the RBDD and TCC (discussed under criterion 1), there are large diversions of water at the Glenn-Colusa Irrigation District's diversion facility and at the Sacramento-San Joaquin Delta pumping plants that likely entrain juvenile salmon as well. There are also numerous small unscreened diversions on the Sacramento River. The impact of these diversions needs to be quantified, and remedial measures pursued and implemented. The various provisions of sections 7, 9, and 10 of the ESA can be brought to bear on this problem.

Natural factors of greatest concern are periodic droughts and the oceanographic phenomenon known as El Niño. The 1976–77 drought severely reduced the size of two consecutive cohorts leaving the 1978 brood as the only large spawning cohort (Table 1). The strong El Niño event during 1982–83 contributed to the decline of the last strong cohort. The only measure to mitigate the profound impact of a strong El Niño is hatchery rearing to increase smolt production from the returning spawners that survive the poor ocean conditions.

Drought conditions, such as those that existed during the past two dry years in Northern California, most directly threaten the winter run by causing elevated water temperatures on the spawning grounds. This problem was resolved using interim measures in 1987, 1988, and 1989. However, a permanent temperature control facility at Shasta Dam is needed to solve this problem for the long term.

Conclusion

In its Notice of Determination (52 FR 6041), NMFS estimated that a run size of between 400 and 1,000 fish was necessary to maintain genetic diversity in the winter-run population. The 1989 run was within that range. If such poor returns occur in the remaining two year classes in the population, NMFS believes the population will begin losing genetic diversity through genetic drift and inbreeding. Further, a small population is vulnerable to major losses from random environmental events such as droughts and El Niño events. Based on the size of the 1989 run and the continuing threats to the population, NMFS believes that the winter run of chinook salmon in the Sacramento River is likely to become an endangered species in the foreseeable future. Therefore, NMFS concludes that the run should be listed as threatened under the ESA and that the various agencies affecting the run and its habitat should continue to ensure that conditions are maintained in the river for maximum production from the fish that return to spawn annually.

Available Conservation Measures

Conservation measures provided to species that are listed as threatened under the ESA include recognition, recovery actions, implementation of certain protective measures, and designation and protection of critical habitat. Some of the most useful protective measures are contained in section 7 of the ESA. Pursuant to section 7, all Federal agencies are required to conduct conservation programs for threatened and endangered species and to consult with NMFS regarding the potential effects of their actions on species under NMFS' jurisdiction.

NMFS has initiated section 7 consultations, pursuant to the emergency listing on August 4, 1989, with the Federal agencies whose actions affect the continued existence of the winter-run. NMFS is currently consulting or planning to consult with the BR on various aspects of the Central Valley Project, the Army Corps of Engineers on gravel mining operations and flood control projects, and the Pacific Fishery Management Council on the effect of sport and commercial fishing.

NMFS will also continue its coordination with the State of California in managing this run and its habitat. The State's Endangered Species Act contains a provision for interagency consultation among State agencies similar to section 7 of the Federal ESA. The CDFG will be reviewing impacts of State actions on the winter run to see if there are actions beyond the Ten-point Restoration Plan that can be taken. Among other actions, they will be reviewing the State's water project for opportunities for improved water conservation, and they will be reviewing their own sport and commercial fishing regulations to ensure those fisheries will not jeopardize the continued existence of the winter run.

NMFS will also participate in the State's review of sport and commercial fishing regulations. NMFS is charged with implementing the Magnuson Fishery Conservation and Management Act (MFCMA) and publishes and administers regulations to implement fishery management plans developed by Regional Fishery Management Councils. Generally, interjurisdictional fisheries or fisheries that occur primarily in Federal waters are candidates for management under the MFCMA. The Pacific salmon fisheries are such fisheries. The Pacific Fishery Management Council manages salmon fisheries off the coasts of Washington, Oregon, and California. Generally, the Council strives to manage the fishery by consensus among the Federal and State fishery management agencies so that State regulations in State waters are consistent with Federal regulations in Federal waters.

NMFS expects that through these consultations under the respective State and Federal laws, a State/Federal regulatory regime will be developed that will ensure the winter run population is not adversely affected by sport or commercial fishing. Therefore, NMFS is providing an exemption from the prohibition on taking of winter-run chinook for fishermen who are fishing lawfully under State law or regulation or Federal regulations under the MFCMA. However, NMFS retains its right and responsibility to overide State fishing laws and regulations if the State develops regulations that are less protective than NMFS believes is necessary for a species listed as threatened under the Federal ESA.

NMFS has appointed a Recovery Team to develop a recovery plan for winter-run chinook salmon in the Sacramento River. The first meeting of the team was on November 28, 1989. The team is reviewing the Restoration Plan as a basis for generating a more comprehensive recovery plan.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent that it is prudent and determinable, to designate critical habitat concurrently with the listing of a species. However, unlike designating a species as threatened or endangered, economic impacts must be considered when designating critical habitat. An area may be excluded from the designation if it is determined that the benefits of an exclusion outweigh the benefits of including the area as critical habitat, and the exclusion will not result in the extinction of the species.

In the emergency rule, NMFS designated the portion of the Sacramento River between Red Bluff Diversion Dam, Tehama County (River Mile 243) and Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zones, the water in the river, and the river bottom as critical habitat for the winter run of chinook salmon in the emergency rule. The economic impact analysis was cursory because the designation was to last only 240 days, and a more rigorous analysis is needed to ensure compliance with the requirement of section 4(b)(2). Since this analysis has not been completed, we are not able to determine the extent of

critical habitat, and the designation will be delayed until the analysis is completed. In this analysis, NMFS will evaluate other alternatives for critical habitat designation including habitat in which winter run have spawned successfully during exceptionally good water years.

NMFS believes that deferring the designation of critical habitat should not be detrimental to the conservation of the run because section 7 consultations conducted by NMFS under the ESA will identify any Federal (including Federally permitted or funded) actions that harm the species including modifying or destroying its habitat. The prohibitions on taking the species will continue to be in effect, and any action that is likely to adversely modify or destroy habitat will be considered a take and will be addressed by NMFS.

Classification

The 1982 Amendments to the ESA (Pub. L. 97–304), in section 4(b)(1)(A), restrict the information which may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all endangered species listing from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413–23, February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

References

Boles, G. 1988. Water Temperature Effects on chinook salmon (*Oncorhynchus tshawytscha*) with emphasis on the Sacramento River: a literature review. Report of the California Department of Water Resources, Northern District. 43 pp.

California Department of Fish and Game. undated. Status A review of the status of Sacramento River Winter-run Chinook Salmon. 29 pp + appendix.

California Department of Water Resources. 1980. Upper Sacramento River spawning gravel study. Northern District. 157 pp.

Combs, B.D. and R.E. Burrows. 1957. Threshold temperatures for normal development of chinook salmon eggs. Prog. Fish Cult. 19:3(6)

Garcia, A. 1989. The impacts of squawfish predation on juvenile chinook salmon at Red Bluff Diversion Dam and other locations in the Sacramento River. USFWS. Report No. AFF/FAO–89–05. 35 pp.

Hall, F.A. 1977. Evaluation of downstream migrant chinook salmon, *Oncorhynchus tschawytscha*, losses in Clifton Court Forebay, Contra Costa County. CDFG Anadromous Fish Branch Report. No. 80–4.

Hallock, R.J. and F.W. Fisher. 1985. Status of the winter-run chinook salmon, *Oncorhynchus tschawytscha*, in the Sacramento River. CDFG Anadromous Fish Branch Office Report. 28 pp.

Hallock, R.J., D.A. Vogel, R.P. Reisenbichler. 1982. The effect of the Red Bluff Diversion Dam on the migration of adult chinook salmon, *Oncorhynchus tschawytscha*, as indicated by radio tagged fish. CDFG Anadromous Fish Branch Admin. Report No. 82–8. 17 pp.

Michny, F. and M. Hampton. 1984. Sacramento River Chico Landing to Red Bluff Project, 1984 juvenile salmon study USFWS Ecological Services. Sacramento. October 1984. 24 pp.

Schaffter, R.G., P.A. Jones, and J.G. Karlton. 1983. Sacramento River and tributaries bank protection and erosion control investigation, evaluation of impacts on fisheries. CDFG Final report. 93 pp.

Seymour, A.H. 1956. Effects of temperature upon young chinook salmon. Ph D. thesis. Univ. Wash., Seattle.

Slater, D.W. 1963. Winter-run Chinook salmon in the Sacramento River California with notes on water temperature requirements for spawning. FWS Special Scientific Reprot—Fisheries No. 461. 9 pp.

U.S. Bureau of Reclamation. 1983. Fishery problems at Anderson-Cottonwood Irrigation District Diversion Dam, Sacramento River, California. Central Valley Fish and Wildlife Management Study Special Report March 1983. 27 pp.

U.S. Fish and Wildlife Service. 1987. Evaluation of the measures of raising the Red Bluff Diversion Dam gates on improving anadramous salmonid fish passage based on observations of radio-tagged fish. USFWS Report No. FR1/FAO–87–21. 14 pp.

Vogel, D.A., K. R. Marine, and J.G. Smith. 1988. Fish passage action program for Red Bluff Diversion Dam: final report on fishery investigations. FWS Report No. FR1/FAO–88–19. 77 pp. + appendices.

List of Subjects in 50 CFR Part 227

Threatened fish and wildlife.

Dated: March 12, 1990.

James E. Douglas, Jr.

Assistant Administrator for Fisheries.

For the reasons listed in the preamble, part 227 of title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 et seq.

2. Under subpart A, section 227.4, paragraph (e) is revised to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(e) Sacramento River winter-run chinook salmon *(Oncorhynchus tschawytscha).*

3. The heading of subpart C is revised to read as follows:

Subpart C—Threatened Marine and Anadromous Fish

4. Section 227.21 under subpart C is revised to read as follows:

§ 227.21 Sacramento River winter-run chinook salmon.

(a) *Prohibitions.* The prohibitions of Section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Sacramento River winter-run chinook salmon except as provided in paragraph (b) of this section.

(b) *Exceptions.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the provisions of part 222—subpart C—Endangered Fish and Wildlife Permits.

(2) Excepted from the prohibitions are any acts involving winter-run chinook salmon which were taken lawfully under a State of California fishing law or regulation, or which were taken lawfully under a fishing regulation under the Magnuson Fisheries Conservation and Management Act. There will be a rebuttable presumption that the winter-run chinook involved in any acts are not entitled to the exemption contained in this subsection.

[FR Doc. 90–6144 Filed 3–19–90; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 54
Tuesday, March 20, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Foster Grandparent and Senior Companion Programs

AGENCY: ACTION.

ACTION: Notice of revision of income eligibility levels for Foster Grandparent and Senior Companion Programs.

SUMMARY: This Notice revises the schedules of income eligibility levels for participation in the Foster Grandparent and Senior Companion Programs published in the **Federal Register**, April 19, 1989 (54 FR 74) and July 20, 1989 (54 FR 138). Because data used for determining FGP and SCP income eligibility levels is available at different times during the year, ACTION has determined that it will issue these guidelines twice a year so as to reflect the most current information and to assure the widest base of potential applicants.

The revised schedules are based on changes in the Poverty Income Guidelines from the Department of Health and Human Services (DHHS), effective February 16, 1990 (55 FR 33) and Supplemental Security Income (SSI) guidelines disseminated by the Social Security Administration, in May 1989. This revision adopts as the income eligibility level for each state the higher amount of either: (a) 125% of the DHHS Poverty Income Guidelines, or (b) 100% of the DHHS Poverty Income Guidelines plus the 1989 amount each state supplemented federal SSI, rounded to the next highest multiple of $5.00. When the Social Security Administration disseminates the 1990 state supplemental to the Federal SSI, ACTION will revise its income eligibility guidelines for those states with SSI supplements above 125% of the DHHS Poverty Income Guidelines.

Schedule of Income Eligibility Levels

Foster Grandparent and Senior Companion Programs

1990 FGP/SCP Income Eligibility Levels For All States, (and Hawaii) except Alaska, California, Colorado, Connecticut, (Based on 125% of DHHS Poverty Income Guidelines)

States	Household Units of							
	One	Two	Three	Four	Five	Six	Seven	Eight
All	$7,850	$10,525	$13,200	$15,875	$18,550	$21,225	$23,900	$26,575
Hawaii	9,040	12,115	15,190	18,265	21,340	24,415	27,490	30,565

(For household units with more than eight members, add $2,675 in all states and $3,075 in Hawaii for each additional member.) Below are adjusted income eligibility levels, which reflect either 1989 SSI Supplements or 125% of the DHHS 1990 Poverty Income Guidelines, and shall apply to the following states.

FGP/SCP Eligibility For SSI—Adjusted States

State	Household Units of							
	One	Two	Three	Four	Five	Six	Seven	Eight
AK	$11,285	$15,575	$18,125	$20,675	$23,225	$25,775	$28,325	$30,875
CA	9,570	16,340	18,380	20,420	22,460	24,500	26,540	28,580
CO	7,850	11,610	13,650	15,875	18,550	21,225	23,900	26,575
CT	10,590	14,635	16,675	18,715	20,755	22,795	24,835	26,875

(For household units with more than eight members add $2,550 in Alaska and $2,040 for California, and Connecticut and $2,675 for Colorado for each additional member.)

Any person whose income is not more than 100 percent of the DHHS Poverty Income Guidelines for her/his specific household unit shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs. The revised income eligibility levels presented here are calculated from the base DHHS Poverty Income Guidelines now in effect.

1990 DHHS POVERTY INCOME GUIDELINES FOR ALL STATES

States	For Household Units of							
	One	Two	Three	Four	Five	Six	Seven	Eight
All except HI & AK	$6,280	$8,420	$10,560	$12,700	$14,840	$16,980	$19,120	$21,260
Hawaii	7,230	9,690	12,150	14,610	17,070	19,530	21,990	24,450
Alaska	7,840	10,520	13,200	15,880	18,560	21,240	23,920	26,600

EFFECTIVE DATE: March 20, 1990.

FOR FURTHER INFORMATION CONTACT: Rey Tejada, Program Officer, Foster Grandparent Program/Senior Companion Program, 1100 Vermont Avenue NW., Washington, DC 20525 or telephone (202) 634–9349.

SUPPLEMENTARY INFORMATION: These ACTION programs are authorized pursuant to sections 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended, Public Law 93–113, 87 Stat. 394. The income eligibility levels are determined by the currently applicable guidelines published by DHHS pursuant to sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty guidelines to be adjusted for Consumer Price Index changes.

Signed in Washington, DC, March 14, 1990.

Jane A. Kenny,

Director of ACTION.

[FR Doc. 90–6289 Filed 3–19–90; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Navajo Tribe of the Navajo Indian Reservation in Arizona, New Mexico, and Utah

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Navajo Tribe of the Navajo Reservation in Arizona, New Mexico, and Utah has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Navajo Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon March 15, 1990, and shall be made available through April 30, 1990, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC, on March 14, 1990.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 90–6293 Filed 3–19–90; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Availability—Record of Decision Bridger-Teton National Forest; Teton, Sublette, Lincoln, Fremont, and Park Counties, WY

The Department of Agriculture, Forest Service, has signed the Record of Decision on the Final Environmental Impact Statement and Final Land and Resource Management Plan for the Bridger-Teton National Forest dated March 2, 1990. The Record of Decision was signed by J.S. Tixier, Regional Forester, Intermountain Region, Ogden, Utah 84401 as the responsible official for the lead agency.

The signing of the Record of Decision has been in conjunction with two other agencies: the Environmental Protection Agency (EPA), who signed as a cooperating agency, and the Department of Interior, Bureau of Land Management (BLM), also signed as a cooperating agency.

A Cooperative Agreement for the EPA was signed by James Scherer, Regional Administrator on February 5, 1990; another Cooperative Agreement for the BLM was signed by Ray Brubaker, Wyoming State Director of the Agency on January 31, 1990, and accompanies the Bridger-Teton National Forest Record of Decision.

The Record of Decision summarizes the basis and need for the decision, presents a comparison of alternatives considered in the Final Environmental Impact Statement (FEIS), and establishes rationale for approving Alternative F, the Preferred Alternative, for the Bridger-Teton National Forest Land and Resource Management Plan.

This decision may be appealed in accordance with the Secretary of Agriculture appeal regulations (36 CFR 217). Appellants must file within 90 days of the date of the publication contained herein. Appeals and Statements of Reason need to be submitted in writing to the Chief of the Forest Service, the Reviewing Officer, Washington, DC 20090–6090, with a copy sent simultaneously to the Deciding Officer, J.S. Tixier, Regional Forester, Ogden, Utah 84401. The appeal period for this decision began March 2, 1990.

Dated: March 14, 1990.

J.S. Tixier,

Regional Forester.

[FR Doc. 90–6323 Filed 3–19–90; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 9–90]

Proposed Foreign-Trade Zone in Liberty County, TX; Houston Customs Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Liberty County Economic Development Corporation, a Texas non-profit corporation, requesting authority to establish a general-purpose foreign-trade zone at sites in Liberty County, Texas, within the Houston Customs port of entry. It was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400), and was formally filed on February 28, 1990. The applicant

is authorized to make this proposal under Article 1446.01, Vernon's Annotated Statutes, Texas.

The proposed general-purpose zone would consist of 4 sites (246 acres) in Liberty County, Texas. Site 1 (150 acres) is located in the City of Cleveland's International Industrial Park on Highway FM 2025 west of U.S. Highway 59. Sites 2 and 3 (Site Nos. E–1, and E–2 in application) 45 acres and 27 acres) are two planned industrial park sites located on the Trinity River some 2 miles south of U.S. Highway 90 in the City of Liberty. The parcels are part of the Chambers-Liberty Counties Navigation District. Site 4 (Site No. E–3 in application) (24 acres) is located within the Cleveland Municipal Airport on Highway FM 787, Liberty County, Texas.

The application contains evidence of the need for zone services in the Liberty County area. Several firms have expressed an interest in using zone procedures for warehousing/distribution, repacking, labeling and repair of machinery and equipment, electronic products and components, sporting goods and plumbing fixtures. No specific manufacturing approval is being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, TX 77057–3012; and, Colonel Brink P. Miller, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553–1229.

As part of its investigation, the examiners committee will hold a public hearing on April 4, 1990, beginning at 1:00 p.m., at the Liberty City Hall, 1829 Sam Houston Street, Liberty, Texas, 77575.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by March 28, 1990. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through May 4, 1990.

A copy of the application is available for public inspection at each of following locations:

U.S. Department of Commerce, District Office, 515 Rusk Street, Room 2625, Houston, TX 77002.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave. NW., Washington, DC 20230.

Dated: March 13, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–6336 Filed 3–19–90; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 10–90]

Proposed Foreign-Trade Zone in Presidio, TX; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Presidio Economic Development Corporation, a Texas non-profit corporation, requesting authority to establish a general-purpose foreign-trade zone in Presidio, Texas, within the Presidio Customs port of entry. It was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 1, 1990. The applicant is authorized to make this proposal under Article 1446.01 of Vernon's Annotated Statutes of the State of Texas.

The proposed general-purpose zone would be situated at a new 184-acre industrial park which straddles State Highway 67 and the Customs border offices, adjacent to the U.S.-Mexico border crossing in Presidio, Texas. Zone status is requested for the entire industrial park, which is owned by RCS, Inc., the developer.

The application contains evidence of the need for zone services in the Presidio area for the storage, inspection and distribution of produce, textiles/apparel, furniture, industrial equipment, and electronic products and components. Zone procedures would also be used in conjunction with the inspection of cattle from Mexico. No specific manufacturing approval is being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057–3012; and Lt. Colonel Steven M. Dougan, District Engineer, U.S. Army Engineer District Albuquerque, P.O. Box 1580, Albuquerque, New Mexico 87103–1580.

As part of its investigation, the examiners committee will hold a public hearing on April 3, 1990, beginning at 10 a.m. at City Hall, West O'Reilly Street, Presidio, Texas 79845.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by March 27, 1990. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through May 3, 1990.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Border Station-Highway 67, P.O. Box 927, Presidio, Texas 79845.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 2835, Washington, DC 20230.

Dated: March 13, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–6337 Filed 3–19–90; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Short-Supply Determination on Certain Type 430 Stainless Steel Wire Rod

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain type 430 stainless steel wire rod.

SHORT-SUPPLY REVIEW NUMBER: 11.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 1,710 metric tons of various sizes of certain type 430 stainless steel wire rod for the first half of 1990 under the U.S.–EC steel agreement.

EFFECTIVE DATE: March 14, 1990.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230 (202) 377–0159.

SUPPLEMENTARY INFORMATION: On February 27, 1990, the Secretary received an adequate short-supply petition from the American Wire Producers Association ("AWPA"), on behalf of four members of the Stainless Committee, requesting a short-supply allowance for 1,710 metric tons of this product under article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. The AWPA requested short supply for this product due to the general unavailability of this grade of stainless rod domestically and the unwillingness of foreign mills to supply this product with regular export licenses. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Regulations, published in the Federal Register on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations").

The requested product meets the specifications for type 430 stainless steel wire rod with the exception of the maximum carbon content. In this request, the carbon level cannot exceed 0.04 percent. The sizes and quantity requested for each size are as follows:

Diameter (Millimeters)	Quantity (Metric Tons)
5.5–6.0	1,470
7.0	65
9.5	60
12.5	20
13.5	35
17.5	40
20.0	20

Action

On March 1, 1990, the Secretary established an official record on this short-supply request (case number 11) in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Regulations require the Secretary to apply a rebuttable presumption that a product is in short supply, and to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary has granted short-supply allowances for this product during each of the two immediately preceding years. Therefore, the Secretary has applied a rebuttable presumption that this product is presently in short supply in accordance with section 4(b)(4)(B)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Regulations. Unless domestic steel producers provided proof that they could and would produce the requested quantity of this product within the desired period of time, provided it represented a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than March 14, 1990. On March 2, 1990, the Secretary published a notice in the **Federal Register** announcing its review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were required to be received no later than March 9, 1990. On March 9, 1990, the Secretary received comments from Baltimore Specialty Steels Corporation (BSSC), an established domestic producer of stainless steel wire rod. BSSC stated that it has produced trial quantities of type 430 stainless rods with 0.04 percent maximum carbon content, but it is not in a position to supply AWPA members during the period covered by this review. Therefore, BSSC has not rebutted this presumption of short supply.

Conclusion

Because the Secretary received no comments to the **Federal Register** notice by potential suppliers to rebut the Secretary's presumption of short supply for the requested product, the Secretary hereby grants, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Regulations, a Short-supply allowance for 1,710 metric tons of the requested type 430 stainless steel wire rod for the first half of 1990 under article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products.

Dated: March 14, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–6338 Filed 3–19–90; 8:45 am]

BILLING CODE 3510–DS–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of final scope determination made by the International Trade Administration, Import Administration, respecting Replacement Parts For Self-Propelled Bituminous Paving Equipment from Canada, Secretariat File No. USA–89–1904–02.

SUMMARY: Pursuant to Rule 81 of the Article 1904 Panel Rules ("Rules"), the Panel Review of the subject case has been completed, effective February 26, 1990. The Binational Panel in this matter issued a decision dated January 24, 1990, which affirmed the Department of Commerce's scope determination of January 23, 1989 (55 FR 5489). A copy of the complete Panel decision is available from the United States Secretary, FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final deteminations in antidumping and countervailing duty cases involving imports from the other county with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1,

1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

The Binational Panel which reviewed the matter issued a decision dated January 24, 1990 (55 FR 5489), which affirmed the Department of Commerce's scope determination of January 23, 1989. No request for an extraordinary challenge committee has been filed with the FTA Binational Secretariat for 31 days. Therefore, pursuant to Rule 81 of the Rules, the Panel Review of the subject case has been completed, effective February 26, 1990.

Dated: March 13, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90-6339 Filed 3-19-90; 8:45 am]

BILLING CODE 3510-GT-M

National Institute of Standards and Technology

[Docket No. 900101-0001]

RIN No. 0693-AA59

Solicitation of Comments on Proposed Revision of Federal Information Processing Standards (FIPS) Family of Input/Output Interface Standards

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: Notice of proposal to revise Federal Information Processing Standards (FIPS) 60-2, 61-1, 62, 63-1, 97, 111, 130, and 131. The National Institute of Standards and Technology proposes to revise these standards to make them non-mandatory, and to issue guidance to agencies on the use of these and other voluntary industry interface standards in procurements. This proposal supersedes the proposal announced in the **Federal Register** (52 FR 44462) of November 19, 1987.

Prior to the submission of these revised standards to the Secretary of Commerce for approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views. Interested parties may obtain copies of FIPS PUBS 60-2, 61-1, 62, 63-1, 97, 111, 130, and 131 from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161.

DATES: To be considered, comments on this proposal must be received on or before June 18, 1990.

ADDRESSES: Written comments concerning these standards should be sent to: National Institute of Standards and Technology, ATTN: Proposed Revision of I/O Standards, Technology Building, Room B-154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW, Washington, DC 20230.

FOR FURTHER INFORMATION, CONTACT: Ms. Shirley Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2833.

SUPPLEMENTARY INFORMATION: Under the provisions of 40 U.S.C. 759(d), the Secretary of Commerce is authorized to promulgate standards and guidelines for Federal computer systems, and to make such standards compulsory and binding to the extent to which the Secretary determines necessary to improve the efficiency of operation, or security and privacy of Federal computer systems. For the reasons set forth in this notice, the National Institute of Standards and Technology proposes to revise the family of input/output (I/O) interface standards listed below by making them voluntary, instead of compulsory and binding. Also, NIST proposes to issue guidance assisting agencies on the use of I/O interface standards and voluntary industry standards in Federal procurements.

The family of I/O interface standards currently includes:

a. FIPS 60-2, I/O Channel Interface, revised July 29, 1983.

b. FIPS 61-1, Channel Level Power Control Interface revised July 13, 1982.

c. FIPS 62, Operational Specifications for Magnetic Tape Subsystems, revised December 30, 1980.

d. FIPS 63-1, Operational Specifications for Variable Block Rotating Mass Storage subsystems, revised April 14, 1983; Supplement to FIPS PUB 63-1, Additional Operational Specifications for Variable Block Rotating Mass Storage Subsystems, April 14, 1983.

e. FIPS 97, Operational Specifications for Fixed Block Rotating Mass Storage Subsystems, February 4, 1983.

f. FIPS 111, Storage Module Interfaces (with extensions for enhanced storage module interfaces), April 18, 1985.

g. FIPS 130, Intelligent Peripheral Interface (IPI), July 16, 1987.

h. FIPS 131, Small Computer System Interface (SCSI), July 16, 1987.

Proposed Revision of Current Standards

NIST proposes to revise the applicability provisions of FIPS 60-2, 61-1, 62, 63-1, 97, 111, 130, and 131 to make the standards voluntary, instead of compulsory and binding. NIST proposes that the standards be used on a voluntary basis when it is determined that interchange of equipment between different systems is likely.

NIST proposes to discontinue the Exclusion and Verification Lists for these standards.

This proposal to revise these standards stems from changes in the marketplace, including the development and use of standard computer system interfaces by computer and peripheral system manufacturers, and the development of advanced technology with very high processing speeds.

The nature of the storage peripherals industry has changed greatly since the first of the I/O interface FIPS were issued in 1978. At that time only, there were no industry consensus standards available for interconnecting different types of storage peripherals to widely used types of mainframe computers. Manufacturers of other types of mainframe computers and of most minicomputers employed various proprietary interfaces for peripherals, and manufactured their own peripheral equipment. The FIPS 60 interface, which was a de facto standard, was adopted to enable users to increase available sources of supply, to attach peripherals from different vendors to their mainframe computers, and to, thereby, achieve the benefits of competition in procurement of this equipment. The standards were made compulsory and binding to maximize potential savings in the procurement of peripheral equipment. Comments are invited on the impact on competition in the procurement of peripheral equipment if the I/O interface FIPS are no longer mandatory.

Today, standard interfaces between computers and peripheral equipment are widely used by manufacturers. This change has been facilitated by the work of Accredited Standards Committee (ASC) X3T9, I/O Interfaces, which NIST has assisted in the development of a number of voluntary standard I/O

interfaces for different applications. These interfaces are included in part in FIPS 111, FIPS 130 and FIPS 131. As a result, peripheral components are readily available as commodity products for which there is considerable competition in the marketplace. It is no longer necessary for the government to mandate standards for the new classes of peripherals and computers (especially personal computers, workstations, and physically small storage devices with internal controllers). The vast majority of storage peripherals manufactured today use one of the interface standards developed by X3T9, or one undocumented de facto interface standard (called "ST-506").

Another reason for revision of the family of I/O interface standards is the difficulty of implementing them by the end user. The I/O interface standards are best implemented by vendors and integrators, rather than by end users. A certain amount of "tuning" of the driver software is necessary to integrate systems with different peripherals, and this is beyond the capability of many users.

Various industry efforts are addressing this problem, but it may not be resolved for some time. The emergence of networking and of Open Systems Interconnection (OSI) technology offers potential solutions to user requirements to access storage devices and share resources in an automatic way.

Another factor is the speed with which the I/O interface standards change and evolve, which is in some cases faster than the voluntary standards process can be made to function. ASC X3T9 has become an organization where different vendors discuss the interfaces of the products they are designing, in the interest of achieving broad interconnectability. Particularly in small systems, these products often come to market well before the voluntary industry standard is completely reviewed, approved and published. This situation makes it very difficult to issue FIPS that are current and that keep up with product changes.

Further, high performance computers support very high processing speeds significantly beyond the data transfer rates of conventional computers to which the I/O Interface standards apply. Agencies procuring these advanced systems have to develop extensive documentation to waive the standards.

After reviewing the comments received from its **Federal Register** Notice (52 FR 44462) of November 19, 1987, that proposed extension and revision of the family of I/O interface standards, NIST has concluded that it is not in the best interests of the Federal government to maintain a family of compulsory and binding I/O interface standards, and that mandatory standards for I/O interfaces are a barrier to the use of advanced technology.

NIST plans to continue to work to assist in the continuing development of voluntary interface standards and their implementation in commercially available products that are interoperable.

Dated: March 14, 1990.

John W. Lyons,

Director.

[FR Doc. 90-6310 Filed 3-19-90; 8:45 am]

BILLING CODE 3510-CN-M

[Docket No. 900102-002]

RIN No. 0693-AA80

Proposed Revision of Federal Information Processing; Standard (FIPS) 120, Graphical Kernel System (GKS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: A revision to Federal Information Processing Standard (FIPS) 120, Graphical Kernel System (GKS), is being proposed. This revision modifies the standard by adding a requirement for validation of GKS implementations that are acquired by Federal agencies. Notice of intent to adopt a test method for FIPS 120 was announced in the **Federal Register** (53 FR 48951 dated December 5, 1988). The revision applies only to paragraph 11 of the announcement portion of the standard, and is provided in this notice.

This revised standard adopts the American National Standard Graphical Kernel System which consists of four parts. These are: The basic functions for computer graphics programming (ANSI X3.124-1985); the FORTRAN programming language binding for GKS (ANSI X3.124-1985); the Pascal programming language binding for GKS (ANSI X3.124.2-1988); and the Ada programming language binding for GKS (ANSI X3.124.3-1988).

Prior to the submission of this proposed revision to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

The proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the American National Standards (X3.124-1985, X3.124.1-1985, X3.124.2-1988, and X3.124.3-1988) from the American National Standards Institute, 1430 Broadway, New York, NY 10018, (212) 642-4900.

DATES: Comments on this proposed revision must be received on or before June 18, 1990.

ADDRESSES: Written comments concerning the revision should be sent to: Director, National Computer Systems Laboratory, ATTN: Revision of FIPS 120, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Benigni, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3266.

Dated: March 14, 1990.

John W. Lyons,

Director.

Federal Information Processing Standards Publication 120-1

(Date)

Announcing the Standard for Graphical Kernel System (GKS)

Federal Information Processing Standards Publications (FIP PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* Graphical Kernel System (GKS) (FIPS PUB 120-1).

2. *Category of Standard.* Software Standard, Graphics.

3. *Explanation.* This publication is a revision of FIPS PUB 120. This revision supersedes FIPS PUB 120 and modifies the standard by adding a requirement

for validation of GKS implementations that are acquired by Federal agencies.

This publication announces adoption of American National Standard Graphical Kernel System (ANS GKS), ANSI X3.124–1985 which consists of four parts identified in the Specifications section, as a Federal Information Processing Standard (FIPS). ANS GKS specifies a library (or toolbox package) of subroutines for an application programmer to incorporate within a program in order to produce and manipulate two-dimensional pictures. The purpose of the standard is to promote portability of graphics application programs between different installations. The standard is for use by implementors as the reference authority in developing graphics software systems; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology (NIST), National Computer Systems Laboratory (NCSL).

6. *Cross Index.*

a. American National Standard Graphical Kernel System (ANS GKS) Functional Description, ANSI X3.124–1985.

b. American National Standard Graphical Kernel System (ANS GKS) FORTRAN Binding, ANSI X3.124.1–1985.

c. American National Standard Graphical Kernel System (ANS GKS) Pascal Binding, ANSI X3.124.2–1988.

d. American National Standard Graphical Kernel System (ANS GKS) Ada Binding, ANSI X3.124.3–1988.

e. American National Standard Computer Graphics Metafile (ANS CMG), ANSI X3.122–1986.

f. American National Standard Programmer's Hierarchical Interactive Graphics System (ANS PHIGS), ANSI X3.144&X3.144.1–1988.

7. *Related Documents*

a. Federal Information Resource Management Regulation 201–39, Acquisition of Federal Information Processing Resources by Contracting.

b. Federal Information Processing Standards Publication 29–2, Interpretation Procedures for Federal Information Processing Standards for Software.

c. Federal Information Processing Standards Publication 128, Computer Graphics Metafile.

d. Federal Information Processing Standards Publication 153, Programmer's Hierarchical Interactive Graphics System (PHIGS).

8. *Objectives.* The primary objectives of this standard are:

—to allow graphics application programs to be easily transported between installations. This will reduce costs associated with the transfer of programs among different computers and graphics devices, including replacement devices.

—to aid manufacturers of graphics equipment by serving as a guideline for identifying useful combinations of graphics capabilities in a device.

—to encourage more effective utilization and management of graphics application programmers by ensuring that skills acquired on one job are transportable to other jobs, thereby reducing the cost of graphics programmer retraining.

—to aid graphics application programmers in understanding using graphics methods by specifying well-defined functions and names. This will avoid the confusion of incompatibility common with operating systems and programming languages.

9. *Applicability*

a. This standard is intended for use in computer graphics applications that are either developed or acquired for government use. It is suitable for use in graphics programming applications that employ a broad spectrum of graphics, from simple passive graphics output (where pictures are produced solely by output functions without interaction with an operator) to interactive applications; and which control a whole range of possible graphics devices, including but not limited to vector and raster devices, microfilm recorders, storage tube displays, refresh displays and color displays. Although this standard was not developed specifically for the Printing/Graphics Arts industry, it may be used in these applications whenever desirable.

b. The use of this standard is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the graphics program will be longer than the life of the presently utilized graphics equipment.

—The graphics application or program is under constant review for updating of the specifications, and changes may result frequently.

—The graphics application is being designed and programmed centrally for a decentralized system that employs computers of different makes and models and different graphics devices.

—The graphics program will or might be run on equipment other than that for which the program is initially written.

—The graphics program is to be understood and maintained by programmers other than the original ones.

—The graphics program is or is likely to be used by organizations outside the Federal government (i.e., State and local governments, and others).

c. Non-standard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although non-standard language features can be very useful, it should be recognized that the use of these or any other non-standard language elements may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

10. *Specifications.* American National Standard Graphical Kernel System (ANS GKS), ANSI X3.124–1985, contains the specifications for this standard. The ANS GKS consists of four parts:

—the basic functions for computer graphics programming (ANSI X3.124–1985);

—the FORTRAN programming language binding for GKS (ANSI X3.124.1–1985);

—the Pascal programming language binding for GKS (ANSI X3.124.2–1988); and

—the Ada programming language binding for GKS (ANSI X3.124.3–1988).

The ANS GKS document defines the scope of the specifications, the syntax and semantics of the GKS functions and requirements for a conforming implementation and program. This standard adopts all of these specifications.

The ANS is separated into two parts. Part I represents the functional aspects of GKS. Part 2 contains bindings of GKS functions to actual programming languages. These bindings have been developed in cooperation with the standards committees of the languages to which GKS is bound. Subsequent language bindings may be added to this standard periodically as they become available. After review and adoption by ANSI, each language binding will automatically become part of FIPS GKS.

ANSI X3.124–1985 and the FORTRAN binding (ANSI 3.124.1–1985) were adopted in 1986 when FIPS 120 was approved by the Secretary of Commerce. The Pascal and Ada programming language bindings are adopted by this revision.

11. *Implementation.* Implementation of this standard involves three areas of consideration: acquisition of GKS software system implementations (or toolbox packages), interpretations of GKS toolbox packages, and validation of GKS implementations.

11.1 *Acquisition of Two-Dimensional Graphics Toolbox Packages.* This revised standard is effective on date of publication of final document in the **Federal Register**, except for paragraph 11.3. No delayed effective date or transition period is necessary since there are no new technical requirements imposed by this revised standard. Two-dimensional graphics toolbox packages acquired for Federal use should implement this standard. Conformance to this standard should be considered whether GKS toolbox packages are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

11.2 *Interpretation of FIPS GKS.* Resolution of questions regarding this standard will be provided by NIST. Questions concerning the content and specifications of this FIPS PUB should be addressed to: Director, National Computer Systems Laboratory, ATTN: GKS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–3266.

11.3 *Validation of GKS Implementation (or Toolbox Packages).* The following requirements for validation of GKS implementations with FORTRAN bindings become effective six months after the publication in the **Federal Register** announcing approval of the revised standard by the Secretary of Commerce. Validation requirements apply only to GKS implementations using the FORTRAN language binding. Additional validation requirements may be added in the future as the GKS Validation Suite is extended to include tests for additional language.

a. The party offering a GKS implementation with a FORTRAN binding (GKS–FORTRAN) to ensure its conformance to FIPS PUB 120–1 shall be responsible for securing validation of the GKS–FORTRAN implementation when it is offered to the Government for purchase, lease, or use in connection with ADP services. The party offering application programs written using FIPS PUB 120–1 with the FORTRAN binding shall be responsible for securing validation of the GKS–FORTRAN implementations used in developing such programs when the programs are offered to the Government for purchase, lease, or use in connection with ADP services.

b. A GKS–FORTRAN implementation which is offered or used by vendors as a result of requirements set forth by Federal agencies in requirements documents, including solicitations, shall meet the specification requirements of this document. To confirm that the specifications of FIPS PUB 120–1 have been met, a GKS–FORTRAN Validation Test Suite has been developed and a GKS–FORTRAN Validation Test Service has been established by the National Computer Systems Laboratory (NCSL) at the National Institute of Standards and Technology (NIST).

c. Federal agencies shall use the test results of the GKS Validation Test Suite to confirm that a particular GKS–FORTRAN implementation meets the specifications of FIPS PUB 120–1.

d. The NCSL will provide for validations of GKS–FORTRAN implementations and will issue certificates as specified in the NIST GKS Information Pack.

e. The requestor is responsible for providing the test facilities necessary to perform the validation. A validation test using the GKS Validation Test Suite is conducted and a Final Test Report is produced summarizing the test results. If the validation results warrant, a Certificate of Validation is issued by the NCSL. If a Certificate is issued, then the Final Test Report will become publicly available.

f. Validation is performed on a cost-reimbursable basis. The NCSL will send the requestor an estimate of validation cost that must be approved before beginning the validation process.

g. Unresolved questions and/or any ambiguities resulting from the validation process shall be referred to NIST for resolution in accordance with the FIPS PUB 29–2, Interpretation Procedures for Federal Information Processing Standards.

h. Requests for, and questions on, GKS validation services should be addressed to: Director, National Computer Systems Laboratory, Attention: GKS Validation Test Service, National Institute of Standards and Technology, Gaithersburg, MD 20899 Telephone: (301) 975–3268 or FTS 975–3268.

i. When an agency determines that the nature of the requirement is such that a GKS–FORTRAN implementation may be offered that has not yet been validated, the requirement statement in paragraph (j) below is recommended to be included in requirements documents, including solicitations. This alternative allows a vendor to be responsive to the document if a request for validation has been or will be made. However, if an agency determines that it is essential for a GKS–FORTRAN implementation to be validated before being offered, such as a requirement for a validated GKS–FORTRAN implementation for performance evaluation or benchmarking, the alternative requirement statement in paragraph (k) below is recommended to be included in the document. This latter alternative may tend to restrict competition for those offerors who have not had their GKS–FORTRAN implementations validated.

j. The standard recommended terminology for use in requirements documents, including solicitations, when allowing delayed validation is:

Delayed Validation of GKS–FORTRAN Implementations

"In addition to the GKS–FORTRAN implementation requirements specified elsewhere in this requirements document, all GKS–FORTRAN implementations brought into the Federal inventory and those GKS–FORTRAN implementations used by vendors to develop programs or provide services shall be tested using the *official GKS Validation Test Suite.* Validation shall be in accordance with FIPS PUB 120–1. The results of the validation shall be used to confirm that the GKS–FORTRAN implementation meets the requirements of FIPS PUB 120–1 as specified elsewhere in this document. To be considered responsive, the offeror shall:

(1) Certify in the offer that all GKS–FORTRAN implementations offered in response to this document have been (or will be) submitted for validation as specified herein, or have been previously validated and included on the list of validated GKS–FORTRAN implementations maintained by the National Computer Systems Laboratory (NCSL). The NCSL list of validated GKS–FORTRAN implementations will be periodically published when sufficient changes warrant. Proof of current validation will be provided in the form of a Certificate of Validation from NCSL. Unless specified elsewhere, proof of submission for validation shall be in the form of a letter from NCSL scheduling the validation. As an interim alternative for the offer the offeror may provide a Manufacturer's Declaration of Conformance on the GKS–FORTRAN implementation and certify that the offeror will provide, not later than 10 days after contract award, a letter from NCSL scheduling the validation. In addition the offeror shall certify to request to have the GKS–FORTRAN

implementation validated at the earliest possible date permitted by the NCSL schedule. Proof that the GKS–FORTRAN implementation has been validated as scheduled shall be in the form of a Certificate of Validation from NCSL. This proof shall be provided by the offeror as soon as validation is completed.

(2) Agree to correct all deviations from FIPS PUB 120–1 reflected in the Final Test Report not previously covered by a waiver. All deviations must be corrected within 12 months from the date of contract award unless otherwise specified. Proof of correction will be in the form of a Certificate of Validation from the NCSL for the corrected GKS–FORTRAN implementation. Failure to make required corrections within the time limits set forth above shall be deemed a failure to deliver required software. The liquidated damages as specified for failure to deliver the GKS–FORTRAN implementation or other software shall apply."

k. The standard recommended terminology for use in requirements documents, including solicitations, when requiring prior validation is:

Prior Validation of GKS–FORTRAN Implementations

"In addition to the implementation requirements specified elsewhere in this document, all GKS–FORTRAN implementations brought into the Federal inventory and those GKS–FORTRAN implementations used by vendors to develop programs or provide services shall have been tested using the *official GKS Validation Test Suite.* Validation shall be in accordance with FIPS PUB 120–1. The results of the validation shall be used to confirm that the GKS–FORTRAN implementations meet the requirements of FIPS PUB 120–1. To be considered responsive, the offer shall:

(1) Certify in the offer that all FIPS GKS–FORTRAN implementations offered in response to this document have been previously validated as set forth herein and included on the list of validated GKS–FORTRAN implementations maintained by the National Computer Systems Laboratory (NCSL). Proof of current validation will be provided in the form of a Certificate of Validation from NCSL.

(2) Agree to correct all deviations from FIPS PUB 120–1 reflected in the Final Test Report not previously covered by waiver. All deviations must be corrected within 12 months from the date of contract award unless otherwise specified elsewhere in this document. If an interpretation of the FIPS PUB 29–2 is required, such a request for interpretation shall be made within 30 calendar days after contract award. Any corrections that are required as a result of decisions made under the procedures of FIPS PUB 29–2 shall be completed within 12 months of the date of formal notification to the contractor of the approval of the interpretation. Proof of correction in either case will be in the form of a Certificate of Validation from the NCSL for the corrected GKS–FORTRAN implementation. Failure to make required corrections within the time limits set forth above shall be deemed a failure to deliver the required software. The liquidated damages as specified for failure to deliver the GKS–FORTRAN implementation or other software shall apply."

1. If the party offering the GKS–FORTRAN implementation is an activity of the U.S. Government, the particular agency shall be responsible for securing the validation of the GKS–FORTRAN implementation in accordance with this paragraph.

12. Waivers

Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S.C. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquistion or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. section 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 90–6311 Filed 3–19–90; 8:45 am]
BILLING CODE 3510–CN–M

[Docket No. 900242–0042]

RIN No. 0693–AA39

Proposed Federal Information Processing Standard (FIPS) 100–1, Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switches Data Networks (PSDN), or Between Two DTEs, by Dedicated Circuit

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice. Request for comments.

SUMMARY: A revision to Federal Information Processing Standard (FIPS) 100/Federal Standard (FED–STD) 1041 will adopt the ANSI X3.100–1989, American National Standard for Information Systems—Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Networks (PSDN), or between Two DTEs, by Dedicated Circuit, which in turn adopts CCITT Recommendation X.25–1988 developed by the Consultative Committee on International Telephone and Telegraph, and ISO 7776–1986 and ISO 8208–1987 developed by the International Organization for Standardization, is proposed for Federal agency use.

Prior to the submission of this proposed revision to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and

local governments. The purpose of this notice is to solicit such views.

This proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implmentation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain a copy of the technical specifications (ANSI X3.100–1989) from the American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018, telephone (212) 642–4900.

DATES: Comments on this proposed revision must be received on or before June 18, 1990.

ADDRESSES: Written comments concerning the revision should be sent to: Director, National Computer Systems Laboratory, ATTN: Proposed Revision of FIPS 100/FED–STD 1041, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. David Su, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–6194.

Dated: March 14, 1990.

John W. Lyons,

Director.

Federal Information Processing Standards Publication 100–1 (Date) Announcing the Standard for Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation With Packet-Switched Data Networks (PSDN), or Between Two DTEs, by Dedicated Circuit

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. *Name of Standard.* Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-switched Data Networks (PSDN), or between Two DTEs, by Dedicated Circuit.

2. *Category of Standard.* Hardware and Software Standards, Computer Network Protocols.

3. *Explanation.* This Federal Information Processing Standard (FIPS) specifies the interface between data terminating equipment (DTE) such as automated data processing (ADP) equipment and telecommunication system terminal equipment, and data circuit-terminating equipment (DCE) for operation in the packet mode on packet-switched data networks (PSDN), or between two DTEs, by dedicated circuit. This revised standard adopts American National Standard ANSI X3.100–1989 which in turn adopts CCITT Recommendation X.25–1988 developed by the Consultative Committee on International Telephone and Telegraph, and ISO 7776–1986 and ISO 8208–1987 developed by the International Organization for Standardization. This revision supersedes FIPS 100/FED–STD 1041.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Institute of Standards and Technology, National Computer Systems Laboratory.

6. *Cross Index.*

a. American National Standard (ANSI) X3.100–1989, Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Networks (PSDN), or between two DTEs, by Dedicated Circuit.

b. CCITT Recommendation X.25–1988 (CCITT Blue Book), Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Terminals Operating in the Packet Mode and Connected to Public Data Networks by Dedicated Circuit.

c. CCITT Recommendation X.25–1984 (CCITT Red Book), Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Terminals Operating in the Packet Mode and Connected to Public Data Networks by Dedicated Circuit.

d. International Standard (ISO) 7776–1986, Data Communications—High-Level Data Link Control Procedures—Description of the X.25 LAPB-Compatible DTE Data Link Procedures.

e. International Standard (ISO) 8208–1987, Data Communications—X.25 Packet Level Protocol for Data Terminal Equipment.

7. *Related Documents.* Related documents are listed in section 2, Referenced and Related Standards and Publications, ANSI X3.100–1989.

8. *Applicability.* The technical specifications of this standard shall be employed in the acquisition, design, and development of all Federal automated data processing equipment, services, and telecommunication equipment and PSDN whenever a X.25 DTE/DCE or DTE/DTE interface is required.

9. *Implementation.* The provisions of this standard are effective in two stages: six months after date of publication of final document in the **Federal Register** for all items covered in CCITT X.25–1984, ISO 7776–1986, and ISO 8208–1987, and January 1, 1993 for additional items covered in CCITT X.25–1988. Any applicable equipment or service ordered on or after the final effective dates, or procurement action for which solicitation documents have not been issued by those dates, must conform to the provisions of this standard unless a waiver has been granted in accordance with the procedures described below.

10. *Specifications.* Affixed. This standard adopts in whole the American National Standard (ANSI) X3.100–1989, Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Networks (PSDN), or Between Two DTEs, by Dedicated Circuit.

11. *Waivers.* Waiver of this standard is required when a CCITT Recommendation X.25 interface is to be employed and has either one of the following conditions: (1) The interface has options that are not permitted by this standard; (2) The interface does not implement all options mandated by this standard.

Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal Computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine

that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(d), shall be part of the procurement documentation and retained by the agency.

12. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 100–1 (FIPSPUBS100–1), and title. Payment may be made by check, money order, or NTIS deposit account.

Copies of the CCITT specifications may also be obtained from NTIS:

—CCITT X.25–1988 (CCITT Blue Book), specify PB89–144216 (X.1–X.32), the cost is $66.

—CCITT X.25–1984 (CCITT Red Book), specify PB85–192664 (X.20–X.32), the cost is $28.

Copies of International Standards may be obtained from: American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

[FR Doc. 90–6309 Filed 3–19–90; 8:45 am]

BILLING CODE 3510–CN–M

[Docket No. 900132–0032]

RIN No. 0693–AA36

Intentions to Adopt a Test Method and Establish a Validation Service for the Federal Information Processing Standard 125, Programming Language Mumps

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice of intentions to adopt a test method and establish a validation service for the Federal Information Processing Standard (FIPS) 125, Programming Language MUMPS.

SUMMARY: In cooperation with the Department of Veterans Affairs, the NIST intends to adopt a software test suite most capable of meeting U.S. government requirements for testing MUMPS language processors for conformance to FIPS 125, Programming Language MUMPS (ANSI/MDC X11.1–1984).

The software test suite being considered as the basis for the test method to be used for validating language processors for conformance to FIPS 125 is the Standard MUMPS Validation Suite provided by the Institute for Applied Information Science, Inc., MUMPS System Laboratory.

Prior to adoption of this test suite for testing MUMPS processors for conformance to FIPS 125, it is essential that consideration is given to the needs and views of manufacturers, the public and government regarding suitability of this test suite to be used for testing implementations of the FIPS 125. The purpose of this notice is to solicit such views on the Standard MUMPS Validation Suite identified in this notice.

A copy of the Standard MUMPS Validation Suite Version 7.4 is available from: National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650.

Medium/format	Version	NTIS accession No.
Tape*	7.4	PB90–50D117
Disk (MS–DOS)* (Hi-density).	7.4	PB90–500125
MUMPS documentation	7.4	PB90–100348

*Includes MUMPS Documentation (PB90–100348) as part of package

The NIST is also seeking organizational applicants for Beta Test Sites. The selected Beta Test Sites would assist NIST in testing pre-release versions of the MUMPS test suite prior to its required use for validating MUMPS processors for conformance to FIPS 125.

DATES: Written comments on the Standard MUMPS Validation Suite test suite identified in this notice must be received on or before May 21, 1990. To become a Beta Test Site, for the MUMPS test suite, organizations should apply in writing by May 21, 1990.

ADDRESSES: Written comments concerning the Standard MUMPS Validation Suite for testing conformance to FIPS and applications to become a MUMPS test suite Beta Test Site should be sent to: William H. Dashiell, Ph.D., National Computer Systems Laboratory, ATTN: MUMPS Validation, Building 225, Room A266, National Institute of Standards and Technology, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION:

Background

The National Computer Systems Laboratory (NCSL), at the National Institute of Standards and Technology (NIST) is responsible for developing the standards that the Federal Government uses in its computer and related telecommunications systems. The NCSL works with government, industry, standards organizations, and research institutions to get the Federal Government's requirements for standards addressed and implemented in off-the-shelf commercial products. Where products are expected to support complex standards specifications, conformance testing may be required to reduce risks and raise confidence in information system products. FIPS 125 adopted the American National Standard for Information Processing Systems Programming Language MUMPS, ANSI/MDC X11.1–1984, to promote portability of MUMPS programs for use on a variety of data processing systems. FIPS 125 states that the National Institute of Standards and Technology will investigate methods for providing validation services for FIPS 125. The planned test method and anticipated validation service announced herein are for the purpose of discharging that responsibility.

NIST announced on January 27, 1989 [see **Federal Register,** Volume 54, No. 17, page 4055, Friday, January 27, 1989, Notices] that it was considering removing the requirements for validation of language processors for the programming language standards BASIC (FIPS 68–2), Pascal (FIPS 109) and MUMPS, (FIPS 125). Based on responses received on this notice, NIST has

determined that there is a government need for a requirement to validate language processors for conformance to FIPS 125. Validation requirements for the other programming language processors are under consideration.

Comment Topics

Solicitation of Comments on the Standard MUMPS Validation Suite Version 7.4: The public is invited to comment on the Standard MUMPS Validation Suite Version 7.4 produced by the Institute for Applied Information Science, Inc., MUMPS System Laboratory. For a very limited time and to encourage as many comments on this test suite as possible, the purchase price for the Standard MUMPS Validation Suite Version 7.4 has been reduced. Comments received should clearly identify the topic being addressed; specify reference(s) in FIPS 125 (ANSI/MDC X11.1–1984) (as appropriate); and identify test suite/program/file (as appropriate).

In your written comments addressing the Standard MUMPS Validation Suite Version 7.4, please include: Date, name and telephone of individual preparing the comment, a complete reference to the ANSI/MDC X11.1–1984, an identification of the part of the Standard MUMPS Validation Suite being addressed, a brief comment, and a recommended solution to the stated problem/comment. A more detailed, suggested comment format may be obtained by sending a written request to Dr. William H. Dashiell.

Beta Test Sites: The purpose of the Beta Site Testing is to ensure that the revised test suite includes all necessary revisions to bring it into full compliance with the FIPS 125 (ANSI/MDC X11.1–1984); that the revised test suite has no side effects generated from the revisions; and that the revised test suite is ready for use in validating conformance to FIPS 125. Beta Testing will be scheduled after the review of the solicited comments and after any necessary revisions have been made to the selected test suite.

Beta Test Sites will execute the test suite in their environments and will be required to provide full, complete, timely, and ongoing comments to NIST on the results. A Beta Test Site shall be required to submit current, valid proof of purchase of the selected test suite. Beta Test Sites shall receive complete copies of the revised test suite resulting from Beta testing. The number of accepted Beta Test Sites may be limited. Accepted Beta Test Sites shall be required to provide full, complete, timely and ongoing feedback for their continued participation as a Beta Test Site. Failure to provide full, complete, timely and ongoing feedback may be grounds for NIST to drop an applicant from the Beta Test Site program. The basic categories of the Beta Test Sites shall be: U.S. federal MUMPS users; non-federal MUMPS users; MUMPS software developer vendors (software development but not compiler/interpreter developers); MUMPS compiler/interpreter vendors (compiler/interpreter developers but not software developers); MUMPS software and MUMPS compiler/interpreter software developer (an entity which performs both software and compiler/interpreter development). There will be a charge to an accepted Beta Test Site of $100.00 to cover materials and shipping expenses. Interested parties, wishing to be a Beta Test Site should submit a name, telephone number and address of a point of contact to NIST, and a statement of commitment.

Updates to the Test Method: The test method will be periodically updated and used as the basis for validating MUMPS processors. The update process will be used to correct errors identified in the test system and to introduce new or modified programs and procedures as appropriate. Modification to the test method is also intended to ensure that processors are being built according to the technical specification of the standard, not the test method. Should an interpretation of FIPS 125 be made that would affect the test method, these changes would be reflected also during the update process.

Obtaining Validation Services: Procedures for requesting validation services will be announced and made available following adoption of a test method for testing FIPS 125.

FOR FURTHER INFORMATION CONTACT: William H. Dashiell, Ph.D., National Institute of Standards and Technology, National Computer Systems Laboratory, Building 225, Room A266, Gaithersburg, MD 20899, Telephone (301) 975–2490, [301–590–0932 (FAX), 301–975–3274 (to verify FAX)], e-mail address on the Defense Data Network (DDN) (also known as ARPANET) is nist-avf@ajpo.sei.cmu.edu; 57:esr002 on DIALCOM.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

Dated: March 14, 1990.

John W. Lyons,

Director.

[FR Doc. 90–6312 Filed 3–19–90; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a public meeting on April 19, 1990, at the Ramada Inn, 76 Industrial Highway, Essington, PA; telephone: (215) 521–2400. The SSC will begin meeting at 10 a.m., and adjourn in the afternoon.

The SSC will discuss the offshore large pelagic recreational fishing survey.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: March 14, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–6380 Filed 3–19–90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the 1990 Agreement Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manuafctured in Hong Kong

March 14, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On February 2, 1990, a notice was published in the **Federal Register** (55 FR

3632) announcing the 1990 agreement limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong.

Pursuant to the current bilateral textile agreement between the Govenments of the United States and Hong Kong that provides for a transfer of quota between certain categories due to the U.S. adoption of the Harmonized Tariff Schedule, the previously announced 1990 limits are being amended for the following categories:

Category sublevels in Group II	Amended 1990 limit
333/334	247,882 dozen.
335	308,187 dozen.
336	173,680 dozen.
341	2,539,126 dozen.
342	460,917 dozen.
345	377,067 dozen.
352	5,289,275 dozen.
438	737,652 dozen.
442	78,257 dozen.
444	35,435 numbers.
633/634/635	1,111,871 dozen of which not more than 415,865 dozen shall be in Categories 633/634 and not more than 853,796 dozen shall be in Category 635.
636	233,745 dozen.
638/639	4,397,600 dozen.
641	759,887 dozen.
642	185,884 dozen.
644	33,853 numbers.
645/646	1,264,382 dozen.
652	3,905,221 dozen.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–6335 Filed 3–19–90; 8:45 am]

BILLING CODE 3510–DR–M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 89–5–CRA]

Adjustment of the Syndicated Exclusivity Surcharge

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of effective date of proceeding.

SUMMARY: The National Cable Television Association has requested the Tribunal to declare when the rate adustment under consideration will be effective. The surcharge adjustment will be effective for the first semiannual accounting period of 1990, payments to be made July 1 to August 29, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 (202–653–5175).

SUPPLEMENTARY INFORMATION: On May 26, 1989, the Community Antenna Television Association (CATA) filed a petition with the Copyright Royalty Tribunal to eliminate the syndicated exclusivity surcharge in light of action taken by the FCC to reinstate its syndicated exclusivity blackout rules. On June 15, 1989, the National Cable Television Association (NCTA) filed a similar petition.

The right to demand blackout was scheduled by the FCC to commence January 1, 1990. On September 15, 1989, the Tribunal, having read and considered the comments filed in response to CATA's and NCTA's petitions, decided to defer consideration of those petitions until after January 1, 1990. On November 17, 1989, the D.C. Circuit Court of Appeals upheld the FCC's new rules.

On January 10, 1990, the Tribunal commenced this proceeding to adjust the syndicated exclusivity surcharge. A procedural schedule was established on February 14, 1990 after the Tribunal had determined the issues to be heard at hearing.

In response to a request by the Program Suppliers for certain extensions to the procedural schedule, NCTA asked the Tribunal to rule when the new adjustments to the surcharge would be effective. NCTA specifically asked that the adjustments become effective for the first semiannual accounting period of 1990.

Both the Music Claimants and the Program Suppliers opposed NCTA's request, citing the Tribunal's decision in the 1982 cable rate adjustment to make the introduction of the surcharge and the 3.75% rate prospective only.

The Tribunal considers that its rate adjustment decision in this proceeding should apply to the first semiannual accounting period for 1990. Both CATA and NCTA petitioned well in advance of the accounting period, intending to ask for prospective relief only. The Tribunal deferred their petitions, based to a large extent on the comments filed by the copyright owners asking for delay, but promised expeditious considerations after January 1, 1990. The schedule initially established by the Tribunal would have allowed time to notify cable operators of their payment obligations for the first accounting period. The delay requested by the Program Suppliers and granted by the Tribunal in an order dated March 14, 1990, will still allow for an announcement by the Tribunal of its decision before the end of July, 1990.

Accordingly, the Tribunal gives notice that the adjustment of the syndicated exclusivity surcharge will be effective for the first semiannual accounting period of 1990, payments to be made July 1–August 29, 1990.

Dated: March 14, 1990.

J. C. Argetsinger,

Chairman.

[FR Doc. 90–6295 Filed 3–19–90; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 9–11 April 1990.

Time: 0830–1700 hours each day.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Software in the Army will meet at the Pentagon. The meeting will be a report-writing/executive session to prepare further recommendations for the study. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–6279 Filed 3–19–90; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is given that the Naval Research Advisory Committee Panel on Tactical Defense Suppression in the Year 2000 will meet on March 26,

1990, at the facilities of the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. Sessions of the meeting will commence at 8:30 a.m. and terminate at 5 p.m. All sessions of the meting will be closed to the public. The purpose of the meeting is to elicit advice from the panel concerning naval aviation's ability to conduct lethal defense suppression missions in the year 2000. The agenda will be comprised of briefings concerning hardware modifications and an executive session focused on report writing, and will include discussions on current and projected capabilities and requirements related to the various warfare areas. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander John Hrenko, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4488.

Dated: March 6, 1990.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90–6242 Filed 3–19–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Hispanic Education

AGENCY: Department of Education.

ACTION: Notice of public forums and request for public comment on Hispanic education.

SUMMARY: The Secretary of Education announces a series of regional public forums on Hispanic education and invites testimony by interested parties.

DATES: One-day forums will be held in San Antonio, Texas, April 10; Boston, Massachusetts, April 26; Chicago, Illinois, May 11; Miami, Florida, May 18; and Los Angeles, California, June 5.

ADDRESSES: Information regarding the locations and times of the individual forums may be obtained by contacting Mahlon G. Anderson, Forum Office: Issues in Hispanic Education, U.S. Department of Education, 400 Maryland Ave., SW., room 4161, Washington, DC 20202–0124..

Written testimony should be sent to: Lauro F. Cavazos, U.S. Secretary of Education, Issues in Hispanic Education: A Public Forum, U.S. Department of Education, 400 Maryland Ave., SW., room 4161, Washington, DC 20202–0124.

A party submitting written testimony should clearly indicate the location and date of the forum for which the submission is intended.

FOR FURTHER INFORMATION CONTACT: Mahlon G. Anderson, telephone: (202) 732–3020.

SUPPLEMENTARY INFORMATION: The Secretary of Education is Chairman of the Task Force on Hispanic Education within the Domestic Policy Council's Working Group on Education. The task Force, created in December, 1989, is specifically charged by the President to—

- Assess the participation of Hispanics in Federal eduation programs;
- Identify barriers that may limit participation of Hispanics in education programs and suggest remedies; and
- Suggest goals and strategies for the education of Hispanics (e.g., reducing the dropout rate, increasing enrollment in higher education, and promoting adult literacy).

The Secretary is seeking to gather information about special problems that students of Hispanic background face in the Nation's schools and to identify steps to improve Hispanic students' access to educational opportunities.

The Secretary encourages the widest possible participation in the forums. He invites presentations from all interested parties, including educators, parents, students and members of the community. He is notifying individuals and organizations of the forums by direct mail and public media in addition to this notice.

Each forum will be opened by the Secretary or the Under Secretary of Education and conducted by senior Department officials.

Format of Presentations

Interested parties may present information at the forums orally or in writing or both. A party requesting to testify in person should contact Mahlon Anderson in advance of the forum the party plans to attend. Speakers will be required to limit their oral statements to five minutes. Those scheduled to testify will be notified of specific scheduling information. A party submitting written testimony is encouraged to provide it to the Secretary (at the address listed elsewhere in this notice) in advance of the forum for which the written testimony is intended. Written testimony may also be submitted at each forum. Written testimony may be of any length.

Dated: March 14, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–6303 Filed 3–19–90; 8:45 am]

BILLING CODE 4000–01–M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Proposal Review Committee on the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: April 2–4, 1990, 9 a.m. until conclusion of business each day.

ADDRESSES: U.S. Department of Education, 400 Maryland Avenue SW., room 2177, Washington, DC 202/732–1887.

FOR FURTHER INFORMATION CONTACT: Jo Jo Hunt, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202–7556 (202/732–1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (part C, title V, Public Law 100–297) and to advise the Congress and the Secretary of Education with regard to federal education programs in which the Indian children or adults participate or from which they can benefit.

The Proposal Review Committee of the Council will meet in closed session starting at approximately 9 a.m. and will end at the conclusion of business each day at approximately 5 p.m. The agenda includes reviewing grant applications for assistance under programs authorized by subparts 1, 2, and 3 of the Indian Education Act, including

applications for (1) Discretionary Grants to Indian-Controlled Schools; (2) Planning, Pilot, and Demonstration Projects; (3) Educational Services Projects; (4) Indian Fellowships; and (5) Educational Services for Indian Adults. Under section 5342(b)(2) of subpart 4 of the Indian Education Act, the Council is directed to review applications for assistance submitted under the Indian Education Act and to make recommendations to the Secretary of Education with respect to their approval.

Financial information obtained from a person which is privileged or confidential contained in and related to these applications will be discussed at the review session. In addition, discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (4) and (6) of section 552b(c) of the Government in the Sunshine Act (Public Law 94–409; 5 U.S.C. 552b(c)).

A summary of the activities of the closed meeting and related matters, which are informative to the public consistent with the policy of title 5 U.S.C. 552b, will be available to the public within 14 days of the meeting.

Dated: March 15, 1990. Signed at Washington, DC.

Jo Jo Hunt,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 90–6381 Filed 3–19–90; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Open Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: March 26, 1990.

TIME: 11:00 a.m. (e.s.t.) until completion of business.

LOCATION: National Assessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, Suite 7322, 1100 L Street NW., Washington, DC, 20005–4013. Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297); (20 USC 1221e–1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparison.

The Executive Committee will meet by teleconference call on March 26, 1990 from 11 a.m. (e.s.t.) until the completion of business. The purpose of this meeting is to take final action concerning the objectives and specifications for the 1992 Reading and Writing Assessments. The public is being given les than fiften days notice of this meeting because of problems encountered with scheduling sub-committee members time to review the materials. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street NW., Suite 7322, Washington, DC, from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–6378 Filed 3–19–90; 8:45 am]

BILLING CODE 4000–01–M

Privacy Act of 1974; System of Records; ED/OIG Non-Federal Auditor Referral File

AGENCY: Department of Education.

ACTION: Privacy Act of 1974; notice of a new system of records; extension of comment period.

SUMMARY: On January 5, 1990, the Department of Education published in the **Federal Register** a notice of a new system of records (system notice) known as the Education Department Office of Inspector General Non-Federal Auditor Referral File (ED/OIG). This system of records will consist of records containing specific information on non-Federal auditors who have audited federally assisted education programs and whom the ED/OIG has referred to State boards of accountancy or professional organizations for violations of generally accepted auditing standards or generally accepted government auditing standards. This information will be used to assist the ED/OIG and other Federal Inspectors General in fulfilling specific statutory responsibilities under the Inspector General Act of 1978. The system notice provided for a comment period ending February 5, 1990 (55 FR 578–580).

After the February 5 comment date had passed, the Department of Education received a comment from a professional accountant's organization. The Department wishes to consider this comment, and is extending the comment period in fairness to others who may wish to comment but did not do so within the original comment period.

DATES: The comment period for the January 5, 1990, system notice is extended until April 4, 1990.

ADDRESSES: Address comments to the Assistant Inspector General for Policy, Planning and Management Services, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW, Mail Stop 1510, Washington, DC 20202. Telephone: (202) 453–4020.

FOR FURTHER INFORMATION CONTACT: Assistant Inspector General for Audit Services, Office of Inspector General, U.S. Department of Education, Room 4200 Switzer Building, 330 C Street, SW, Washington, DC 20202. Telephone: (202) 732–5600.

Dated: March 13, 1990.

James B. Thomas, Jr.,

Inspector General.

[FR Doc. 90–6302 Filed 3–19–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 89–89–NG]

Unicorp Energy, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Canada and Mexico and Granting Intervention

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting blanket authorization to export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Unicorp Energy, Inc., blanket authoriztion to export up to a combined total of 145 Bcf of natural gas to Canada and Mexico for a two-year period beginning March 11, 1990, and ending March 10, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 14, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-6328 Filed 3-19-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP85-169-049]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 14, 1990

Take notice that CNG Transmission Corporation "CNG"), on March 5, 1990, in compliance with the Commission's February 22, 1990, order, 50 FERC (CCH) ¶ 61,206 (1990), in this proceeding, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Second Substitute Fourteenth Revised Sheet No. 31
Second Substitute Fifteenth Revised Sheet No. 31
Fourth Substitute Sixteenth Revised Sheet No. 31
Substitute Alternate Seventeenth Revised Sheet No. 31

The proposed effective dates are December 1, 1989, January 1, 1990, February 1, 1990, and March 1, 1990, respectively.

CNG states that the purpose of this filing is to conform the GSS rates that have appeared on tariff sheets filed since November 1, 1989, to the terms of the Commission's February 22 Order in this proceeding. No sales or transportation rates are affected by the filing.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211). All protests should be filed on or before March 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-6251 Filed 3-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-86-000]

MIGC, Inc.; Proposed Changes in FERC Gas Tariff

March 14, 1990.

Take notice that MIGC, Inc. (MIGC), on March 1, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, The proposed changes are designed to increase MIGC's jurisdictional revenues by $2,903,539 based on the twelve months ending December 31, 1989, as adjusted for known and measurable changes for the period ending September 30, 1990. MIGC has proposed that the increased rates and tariff sheets become effective April 1, 1990.

MIGC states that the requested change in rates is to recover deficiencies experienced in its annual jurisdictional cost of service. MIGC notes that the principal reasons for the proposed rate changes are increased costs of labor, operation and maintenance expenses, working capital requirements, and taxes as well as the decline in volumes connected to the MIGC system. MIGC is also proposing to eliminate its Purchased Gas Adjustment Clause.

MIGC states that copies of this filing were served upon all of MIGC's jurisdictional customers, as well as interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-6252 Filed 3-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-4-26-000]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

March 14, 1990.

Take notice that on February 27, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing six (6) copies each of the First Revised Sheet Nos. 173 and 174 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised tariff sheets is April 1, 1990. The purposes of the filing are: (1) To track the flow-through of take-or-pay buyout, buydown and other contract reformation costs (transition costs) allocated to Colorado Interstate Gas Company (CIG) by Northwest Pipeline Corporation (Northwest) at Docket Nos. RP89-137, RP89-219 and RP90-50 and passed on to Natural at Docket Nos. RP89-178, TM90-2-32 and TM90-4-32, respectively, and (2) to reflect accrued interest for the period of June 1989 through March 1990.

Natural requests that the Commission grant any waivers it deems necessary to allow the tariff sheets to become effective April 1, 1990. A copy of the filing was mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list in Docket Nos. RP89-188-000.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before March 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-6253 Filed 3-19-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 90-06; Certification Notice—54]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUE" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes complance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Futher information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION:

The following company has filed a self certification:

Name	Dated received	Type of facility	Megawatt capacity	Location
Darthmouth Power Associates Limited Partnership, Darthmouth MA.	3-01-90	Combined cycle	98	North Darthmouth, MA

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, phone number (202) 586-6769.

Issued in Washington, DC on March 13, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-6329 Filed 3-19-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Change in Filing Deadline in Special Refund Proceeding No. HEF-0591 Involving Atlantic Richfield Co.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of extension of time for filing applications for refund in special refund proceeding HEF-0591, Atlantic Richfield Company.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) hereby officially extends the deadline for filing Applications for Refund from the escrow account established pursuant to a consent order entered into between the DOE and the Atlantic Richfield Company (ARCO). *Special Refund Proceeding No. HEF-0591.* The previous deadline was May 1, 1989. The new deadline is July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Max William Yano, Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION:

On January 28, 1988, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the moneys in the oil overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and the Atlantic Richfield Company. *See Atlantic Richfield Co.*, 17 DOE ¶ 85,069, 53 FR 3254 (February 4, 1988). That Decision established August 31, 1988, as the filing deadline for the submission of refund applications for direct restitution by purchasers of ARCO's refined petroleum products. 176 DOE at 88,155, 53 FR at 3261. On August 31, 1988, that filing deadline was extended to May 1, 1989, 53 FR 34830 (September 8, 1988).

Over 3,000 claimants have filed after the due date, as a result of notice given in a collateral court action. On October 8, 1989, an Order Authorizing Dissemination of Class Notice was filed by the Clerk of the United States District Court for the Northern District of California with respect to the pending litigation in *Van Vranken, et al.* v. *Atlantic Richfield Company.* Civil No. C-79-0627-SW (N.D. Cal.). As a result, a Notice of Pendency fo Class Action was disseminated to *Van Vranken* Litigation Class members by the Class Counsel in November 1989. The Notice, *inter alia,* gave an overview of the status of all *Van Vranken* class litigation, including the recent rejection by the U.S. Temporary Emergency Court of Appeals (TECA) of the Class' attempt to file a "class" application with OHA. In addition, the Notice specifically informed class members that because of the TECA decision, "Class Counsel will not be submittting any claims to the DOE on behalf of class members," and that class members who had not filed an individual claim with OHA should do so. Notice at 11-12. Thus, numerous potential claimants only recently became aware of their right to file an individual refund claim in the DOE's ARCO Refund Proceeding (Case No. HEF-0591). As a result, more than three thousand refund applications have been filed in this proceeding after the May 1, 1989 deadline for filing. We have carefully considered the situation, and

have concluded that the time for filing applications in the proceeding should be extended again, until July 1, 1990. In accordance with our usual practice, applications postmarked after that date are subject to summary dismissal. Any unclaimed funds remaining after all pending claims are resolved will be made available for indirect restitution prusuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: March 12, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-6330 Filed 3-19-90; 8:45 am]

BILING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3746-7]

Science Advisory Board; Ecological Processes and Effects Committee; Ecoregion Subcommittee; Regionalization Techniques Review; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Ecoregion Subcommittee of the Science Advisory Board will be held on April 16-18, 1990 at the U.S. EPA Environmental Research Laboratory, 299 SW 35th St., Corvallis, OR 97333. The meeting will start at 8 a.m. on April 16, and will adjourn no later than 1 p.m. April 18, and is open to the public. Seating will be on a first come basis. The main purpose of this meeting is to review the scientific basis and the application of the Ecoregion concept developed by the Agency's Office of Research and Development. An ecoregion is an area of relative homogeneity in ecological systems. The procedure for establishing Ecoregions is called regionalization and it involves the use of environmental data with spatial components to segregate environmental diversity into regions or patches. Copies of the relevant EPA document, entitled, "Regionalization as a Tool for Managing Environmental Resources" EPA 600/3-89/060 is available from Dr. Dixon Landers at ERL-C (503) 757-4601.

An Agenda for the meeting is available from Mrs. Frances Dolby, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington DC 20460 (202-382-2552). Members of the public desiring additional information should contact Dr. Edward S. Bender, Executive Secretary, Ecological Processes and Effects Committee, by telephone at the number noted above or by mail to the Science Advisory Board (A101F), 401 M Street, SW., Washington, DC 20460 no later than c.o.b. April 11, 1990. Anyone wishing to make a presentation at the meeting should forward a written statement to Dr. Bender by the date noted above. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: March 13, 1990.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 90-6320 Filed 3-19-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3746-8]

Public Water System Supervision Program: Revision for State of Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of Maryland is revising its approved Public Water System Supervision (PWSS) Primacy Programs. Maryland has developed: (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690); and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). Edwin B. Erickson, Regional Administrator for EPA Region III, has determined that these State program revisions are no less stringent than the corresponding federal regulations and has approved these State program revisions. This determination shall become effective on April 19, 1990, and was based upon a thorough evaluation of Maryland's PWSS program which has met the requirements stated in 40 CFR 142.10.

Maryland's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before April 19, 1990. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Edwin B. Erickson, Regional Administrator, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing, (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing, and (3) the signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Maryland. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Maryland. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on April 19, 1990.

Please bring this notice to the attention of any persons known to you to have an interest in this determination.

All documents relating to this determination are available for

inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the office of the Regional Administrator and at the following location in Maryland: Water Supply Program, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Richard A. Rogers, EPA Region III, Drinking Water Section (3WM41) at the Philadelphia address given above, telephone (215) 597–8992, (FTS) 597–8992.

Dated: March 12, 1990.

Stanley L. Laskowski,

Acting Regional Administrator, EPA, Region III.

[FR Doc. 90–6321 Filed 3–19–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 12, 1990.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0388.

Title: Section 80.227, Special requirements for protection from RF radiation.

Action: Extension.

Respondents: Individuals or households and businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 35 responses; 350 hours total annual burden; 10 hours average burden per response.

Needs and Uses: Manufacturers must provide information to users regarding the prevention of human exposure to radiofrequency radiation in excess of the safety guidelines. Such information shall be included in the instructions.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–6234 Filed 3–19–90; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 12, 1990.

The Federal Communications Commission has submitted the following information collection requirement to the OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0009.

Title: Application for Consent to Assignment of Radio Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Radio Broadcast Station Construction Permit or License (Short Form).

Form Number: FCC Form 316.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 1,194 Responses; 3,582 Hours.

Needs and Uses: FCC Form 316 is required when applying for authority for a voluntary/involuntary assignment of a broadcast license or construction permit or transfer of control of corporation holding broadcast license or construction permit. The data is used by the FCC staff to determine if applicant meets basic statutory requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–6233 Filed 3–19–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

March 14, 1990.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Final approval under OMB delegated authority of the implementation of two one-time surveys:

Report title: 1990 Quinquennial Survey of Finance Companies

Agency form numbers: FR 3033p and FR 3033s

OMB Docket number: 7100–0246

Frequency: One-time

Reporters: Finance companies

Annual reporting hours: 1,735

Average hours per response: 15 minutes for the FR 3033p and 1.6 hours for the FR 3033s

Estimated number of respondents: 3,100 for the FR 3033p and 600 for the FR 3033s

Small businesses are affected.

General description of report:

This information collection is voluntary (12 U.S.C. 225(a), 263, and 353–359) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Since 1955 the Federal Reserve has conducted surveys of domestic finance companies every five years to establish timely benchmark data for regularly published series on consumer and business credit and on major assets and liabilities of finance companies. The FR 3033p is a one-page questionnaire. The FR 3033s consists of instructions and a two-page form on which finance companies are asked to provide detailed balance sheet information.

Board of Governors of the Federal Reserve System, March 14, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-6275 Filed 3-19-90; 8:45 am]

BILLING CODE 6210-01-M

Banc One Corp., Columbus, OH; Proposal to Underwrite and Deal in Certain Securities to a Limited Extent, Underwrite and Deal in Government Securities, Offer Financial Advisory Services, Engage in Full-Service Brokerage, and Offer Futures Commission Merchant Services

Banc One Corporation, Columbus, Ohio ("Banc One"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to acquire Meuse, Rinker, Chapman, Endres & Brooks, Columbus, Ohio ("Meuse, Rinker"), and thereby engage, through Banc One Capital Corporation, Columbus, Ohio ("Banc One"), in the activities of underwriting and dealing in, to a limited extent, commercial paper, municipal revenue bonds, mortgage-related securities, and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but are not eligible for banks to underwrite and deal in.

Banc One also has applied to: (1) Underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("bank-eligible securities"), pursuant to section 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)); (2) act as a futures commission merchant, pursuant to § 225.25(b)(18) of the Board's Regulation Y (12 CFR 225.25(b)(18)); (3) provide investment advice on financial futures and options on futures, pursuant to § 225.25(b)(19) of the Board's Regulation Y (12 CFR 225.25(b)(19)); and (4) provide financial advisory services. Company would conduct the proposed activities on a nationwide basis.

In addition, Banc One proposes to provide investment advisory and brokerage activities separately and on a combined basis subject to all of the conditions of 12 CFR 225.25(b)(4), (b)(15), and PNC Financial Corporation, 75 Federal Reserve Bulletin 396 (1988).

Banc One has applied to underwrite and deal in ineligible securities in accordance with the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. See, e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation, 73 Federal Reserve Bulletin 473 (1987); and Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation, and Security Pacific Corporation, 73 Federal Reserve Bulletin 731 (1987).

Banc One also has applied to provide financial advisory services of the type approved in Signet Banking Corporation, 73 Federal Reserve Bulletin 59 (1987). The Board has previously approved providing advice to financial and nonfinancial institutions only. Banc One proposes to offer these services to individuals who meet the definition of institutional customers, whose net worth exceeds one million dollars.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Banc One contends that permitting bank holding companies to engage in the proposed activities would result in increased competition, gains in efficiency, and maintenance of the competitiveness of U.S. banking organizations.

Banc One contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. With regard to the proposed ineligible securities underwriting and dealing activity, Banc One states that, consistent with section 20, it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 3, 1990.

Board of Governors of the Federal Reserve System, March 14, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6274 Filed 3-19-90; 8:45 am]

BILLING CODE 6210-01-M

Bergen Bank A/S; Change in Bank Control Notices Acquisition of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 90-5556) published as page 9219 of the issue for Monday, March 12, 1990.

The comment period for the application of Bergen Bank A/S, Bergen, Norway, to acquire, as part of the merger of Bergen with Den norske Creditbank, Oslo, Norway, 100 percent of the outstanding voting shares of DnC US Finance, New York, New York, and DnC America Inc., New York, New York, is amended to end on April 5, 1990.

Board of Governors of the Federal Reserve System, March 14, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6273 Filed 3-19-90; 8:45 am]

BILLING CODE 6210-01-M

Home Port Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 9, 1990.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Home Port Bancorp, Inc.*, Nantucket, Massachusetts; to merge with Martha's Vineyard Bancorp, Inc., Vineyard Haven, Massachusetts, and thereby indirectly acquire Martha's Vineyard National Bank, Vineyard Haven, Massachusetts.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Arrow Bank Corp.*, Glen Falls, New York, and Arrow Acquisition Corporation, Rutland, Vermont; to acquire 100 percent of the voting shares of United Vermont Bancorporation, Rutland, Vermont, and thereby indirectly acquire Proctor Bank, Rutland, Vermont; First Twin-State Bank, White River Junction, Vermont; and Green Mountain Bank, Bondville, Vermont. In connection with this application, United Vermont Bancorporation also has applied to become a bank holding company.

C. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Commercial National Financial Corporation*, Latrobe, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial National Bank of Westmoreland County, Latrobe, Pennsylvania.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Cherokee Bancorp*, Centre, Alabama; to become a bank holding company by acquiring 85 percent of the voting shares of Farmers and Merchants Bank, Centre, Alabama.

2. *T.C.N.B., Inc.*, Fort Pierce, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Treasure Coast National Bank, Fort Pierce, Florida, a *de novo* bank.

E. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *LBT Bancshares, Inc.*, Litchfield, Illinois; to acquire 100 percent of the voting shares of Palmer State Bank, Palmer, Illinois.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hope Bancshares, Inc.*, Hope, Kansas; to become a bank holding company by acquiring 96.8 percent of the voting shares of The First National Bank of Hope, Hope, Kansas.

Board of Governors of the Federal Reserve System, March 14, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6272 Filed 3-19-90; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0204, GSAR part 552.212-71, Notice of Shipment. A notice of shipment is required in certain situations, as when arrangements for storage, installation, transhipment, or other action must be coordinated upon delivery.

ADDRESSES: Send comments to Bruce McConnell, GSA Deck Office, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden: Respondents: 107; *annual responses:* 3.0; *average hours per response:* 0.2500; *burden hours:* 80.25.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, (202) 523-4765. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), Room 3014, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 535-7691, or by faxing your request to (202) 786-9027.

Dated: March 12, 1990.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 90-6298 Filed 3-19-90; 8:45 am]

BILLING CODE 6820-61-M

Establishment of Business Advisory Board

Establishment of Advisory Board. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the establishment of the General Services Administration (GSA) Business Advisory Board. The Administrator of General Services has determined that establishment of this committee is in the public interest.

Designation. General Services Administration Business Advisory Board.

Purpose. The purpose of the board is to ensure a dialogue between senior GSA executives and leaders of private sector organizations concerning emerging trends and issues that will have an impact on GSA's future policy and program formulation.

Balanced Membership. The board's membership will be balanced so as to utilize the expertise of individuals whose experience is related to GSA's mission. Qualifications of prospective members will be assessed on the basis of related experience and expertise and the ability to provide objective recommendations regarding key agency issue.

Contact for information. GSA's Office of Operations and Industry Relations is sponsoring this committee. For additional information, contact Edwin T. Cox, Jr., Associate Administrator for Operations and Industry Relations, GSA, Washington, DC 20405, telephone (202) 523-0100.

Dated: March 8, 1990.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 90-6297 Filed 3-19-90; 8:45 am]

BILLING CODE 6820-BR-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Importation of Nonhuman Primates: Meeting

The Centers for Disease Control (CDC) announces the following public meeting between CDC and registered importers of nonhuman primates, end users of imported nonhuman primates, and other interested parties.

Time and Date: 1 p.m., Friday, March 23, 1990.

Place: Centers for Disease Control, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public for participation, comments, and observation, limited only by space available.

Purpose of the Meeting: To obtain input from individuals, organizations, and institutions involved in the

transport, quarantine, care, use, and regulation of nonhuman primates, concerning: (1) Actions taken to date to prevent the importation of filoviruses into the United States and their transmission to animal handlers; (2) potential impact of the imposition of a temporary ban on the importation into the United States of cynomolgus monkeys; and (3) additional disease control measures.

Contact Person for more Information: Charles R. McCance, Division of Quarantine, Center for Prevention Services, CDC, Atlanta, Georgia 30333. Telephone: FTS 236-1455; Commercial (404) 639-1455.

Dated: March 16, 1990.

George E. Hardy, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 90-6514 Filed 3-19-90; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 90E-0032]

Determination of Regulatory Review Period for Purposes of Patent Extension; Eminase®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Eminase® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissiner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug products.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may review.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product, Eminase®. Eminase® (anistreplase) is indicated in the management of acute myocardial infarction (AMI) in adults, for the lysis of thrombi obstructing coronary arteries, the reduction of infarct size, the improvement of ventricular function following AMI, and the reduction of mortality associated with AMI. Subsequently to this approval, the Patent and Trademark Office received a patent term restoration application for Eminase® (U.S. Patent No. 4,285,932) from the Beecham Group Public Ltd. Co. of England, and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated February 8, 1990, advised the Patent and Tradmark Office that the human drug products had undergone a regulatory review period. The letter also stated that the active ingredient, anistreplase, represented the first permitted commercial marketing or use. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Eminase® is 2,825 days. Of this time, 2,287 days occurred during the testing phase of the regulatory review period, while 538 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* March 6, 1982. The applicant claims March 4, 1982, as the date the investigational new drug (IND) application became effective. However, FDA records indicate that the IND was received by FDA on February 4, 1982, and became effective 30 days later, on March 6, 1982.

2. *The date the application was initially submitted with respect to the human drug product under section 351 of the Public Health Service Act:* June 8, 1988. The applicant claims June 14, 1988, as the receipt date for the product license application (PLA) for Eminase®; however, FDA records indicate that the PLA was received by FDA on June 8, 1988. Also, the applicant claims PLA 88-0292 as the PLA number for Eminase®; however, FDA records indicate that the PLA number for this product is PLA 88-0293. The applicant further claims that regulatory review occurred under section 505 of the Federal Food, Drug, and Cosmetic Act; however, FDA records indicate that PLA 88-0293 was reviewed and approved under section 351 of the Public Health Service Act.

3. *The date the application was approved:* November 27, 1989. FDA has verified the applicant's claim that PLA approval occurred on November 27, 1989. However, the applicant claims that the PLA number is PLA 88-0292; but FDA records indicate that the PLA number for this product is PLA 88-0293.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 21, 1990, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested persons may petition FDA, on or before September 17, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management

Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 12, 1990.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90-6285 Filed 3-19-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[015-007-N]

Quarterly Listing of Program Issuances and Coverage Determinations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General Notice.

SUMMARY: This notice lists HCFA manual instructions, interpretative rules, statements of policy, and national coverage determinations that were published during July, August and September 1989 that relate to the Medicare program. Section 1871 (c) of the Social Security Act requires that we publish a list of our Medicare issuances in the **Federal Register** every three months.

We also are providing the contents of several revisions to the Medicare Coverage Issues Manual. On August 21, 1989 we published (42 FR 34555) the content of the Manual and indicated that we will publish quarterly any updates. Adding the Coverage Issues Manual changes to this listing allows us to fulfill this requirement in a manner that facilitates easy identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT:

Allen Savadkin (For Instruction Information Only) (301) 966-5265

Samuel Della Vechia (For Coverage Information) (301) 966-5316

Matt Plonski (For all Other Information) (301) 966-4662

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program which pays for health care and related services for 34 million Medicare beneficiaries. Administration of the program involves effective communications with regional offices, State governments, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the program is based, we issue regulations under authority granted the Secretary under sections 1102 and 1871 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the program efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** no less frequently than every three months a list of all Medicare manual instructions, interpretative rules, statements of policy, and guidelines of general applicability not issued as regulations. This is the seventh listing of issuances. As in prior notices, although both substantive and interpretive regulations published in the **Federal Register** in accordance with section 1871(a) of the Act are not subject to the publication requirement of section 1871(c), for the sake of completeness of the listing of operational and policy statements we are including regulations (proposed and final) published.

II. Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies whether certain specific medical items, services, technologies, or treatment procedures can be paid for under Medicare. We published on August 21, 1989 (54 FR 34555), a notice that contained all the Medicare coverage decisions issued in that manual.

In the notice we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate Federal Register notices. Since we have been publishing each quarter a notice listing all manual issuances, including any released for the Coverage Issues Manual, we are adding a table to this listing that contains revisions to the manual. Readers should find this an easy way to identify both our issuance of changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are published on an as needed basis. We publish revisions as a result of technological changes, medical practice changes, or in response to inquiries we receive seeking clarification or resolution of a coverage issue under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. We have decided to reprint any manual revision exactly as transmitted to manual holders, except we will not reprint material relating solely to the table of contents. The table of contents serves primarily as a finding aid for the user of manual material and does not identify items as covered or not.

Since the August 21, 1989, publication date we have published five issuances answering various inquiries concerning coverage issues. Issuance updates found in Table IV, when added to material from the manual published on August 21, 1989 (42 FR 3455), constitute a complete manual as of September 30, 1989. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section B.

A. How to Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, regulations, or coverage decisions published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our manuals may wish to review Table I of our first three notices; those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 (42 FR 34555) publication; and those seeking information on the location of regional depository libraries may wish to review Table IV of our first notice (53 FR 21736). We have divided this current listing into four tables.

Table I describes where interested individuals can get a description of all previously published HCFA manuals and Memoranda.

Table II of this notice lists, for each of our manuals or Program Memoranda, a transmittal number unique to that instruction and a brief statement of its subject matter. The subject matter in a transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Table III lists all Medicare and Medicaid regulations and general notices published in the **Federal Register**

during this period. For each item, we list the date published, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changes.

Table IV describes each revision to the Medicare Coverage Issues Manual that was published during the quarter. For each of the revisions, we list a brief synopsis of the revision as it appears on the transmittal sheet, the manual section number, and title of the section. We present a complete copy of the material as revised, no matter how minor the revision, and identify the revision by printing text that was changed in italics.

B. How to Obtain Listed Material

• Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783–3238; National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161. Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS will give complete details on how to obtain the publications they sell.

• Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or may subscribe to the **Federal Register** by contacting the Government Printing Office at the following address: Superintendent of Documents, Government Printing Office, Washington, DC 20402, Telephone (202) 783–3238. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

• Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA regional office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

C. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal Government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the closest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Table II, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual part 3—Claims Process (HCFA–Pub. 13–3) transmittal containing "Claims Processing Timeliness" use the Superintendent of Documents number HE 22.8/6 and the HCFA transmittal number 1436.

D. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Individuals are expected to procure copies or arrange to review them as noted above.

Questions concerning items in Tables I or II may be addressed to Allen Savadkin, Office of Issuances, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207; Telephone (301) 966–5265.

Questions concerning items in Table IV may be addressed to Samuel Della Vecchia, Office of Coverage Policy, Health Care Financing Administration, Room 401, East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (301) 966–5316.

Questions concerning all other information may be addressed to Matt Plonski, Regulations Staff, Health Care Financing Administration, Room 132, East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (301) 966–4662.

Table I.—Description of Manuals, Memoranda and HCFA Rulings

An extensive descriptive listing of manuals and memoranda was previously published at 53 FR 21731 and supplemented at 53 FR 36892 and 53 FR 50579. Also, for a complete descriptive listing of the Medicare Coverage Issues Manual please review 53 FR 34555.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY–SEPTEMBER 1989

Trans. No.	Manual/Subject/Publication Number
	Intermediary Manual Part 2—Audits, Reimbursement, Program Administration (HCFA-Pub. 13–2) (Superintendent of Documents No. HE 22.8/6–2)
371	● Audits.
	Intermediary Manual Part 3—Claims Process (HCFA-Pub. 13.3) (Superintendent of Documents No. HE 22.8/6–2)
1431	● Intermediary Part B Appeals Report.
1432	● Intermediary Workload Report.
1433	● Physician Attestation. Standards for Intermediary Determinations Under Alternative Signature Option. Sample Questions for Site Visit.
1434	● Review of Form HCFA–1450. HCPCS for Hospital Outpatient Radiology Services. Radiology Pricer Program.
1435	● Processing Beneficiary Complaints and Inquiries Regarding Demand Bills. Letter Requesting SNF to Submit a Bill at Beneficiary's Request. Completion of SNF Denial Letters.
1436	● Claims Processing Timeliness.
1437	● Fraud and Abuse.
1438	● Review of Routine Home Care, Inpatient Respite, General Inpatient and Continuous Care Claims. Review of Hospice Claims for Hospital Admissions of Beneficiaries Who Have Elected Hospice Care. Review of Hospice Revocations. Followup Procedures. Hospice Report of Medical Review Activity. Coverage Compliance Review for Home Health Agency Claims "Documentation of Beneficiary Home Visit".
1439	● Provider Specific File. Provider Specific Data Record Layout and Description.
1440	● Speech Pathology Services Furnished By Hospital or By Other Under Arrangements With Hospital and Under Its Supervision.
1441	● Claims Processing Timeliness. Format for Fee Schedule, Prevailing Charge and Conversion Factor Data. Reporting Bills to HCFA. Batching Bills. Control of Rejected Bills. Followup/Control Notices for Rejected Bills.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY–SEPTEMBER 1989—Continued

Trans. No.	Manual/Subject/Publication Number
	Automatically Corrected Bills.
	Monthly PRO Adjustment Bill Report.
1442	● Reduction in Reimbursement Due to P.L. 100–177, P.L. 100–119, and P.L. 100–203.
	OCE Editor.
	Disclosure to Peer Review Organization.
1443	● Dialysis for ESRD.
	Review of ESRD Bills.
	Intermediary Manual
	Part 4—Audit Procedures (HCFA-Pub. 13–4)
	(Superintendent of Documents No. 22.8/6–4)
27	● Guidelines for Performing Provider Audits.
28	● Prospective Payment System Hospital Audit Guidelines.
	TEFRA Review Guidelines.
	Carriers Manual
	Part 3—Claims Process (HCFA-Pub. 14–3)
	(Superintendent of Documents No. HE 22.8/7)
1313	● Coordination of Part A Denials From Intermediaries.
	Return of Individual Payment Records for Correction and Monthly Report of Payment Record Edit Exceptions.
1314	● Monthly Carrier Appeals Report.
1315	● Determining Reasonable Charge for Physicians' Services Furnished in Outpatient Settings.
1316	● Overpayments.
	Determining Liability for Overpayments.
	The Overpayment Resulted from an incorrect Reasonable Charge Determination.
	Total Overpayment Less Than $10.
	Overpayment Amount is at Least $10 But Less Than $50.
	Overpayment Amount is $50 or More.
	Refund Letter to Physician Returned as Undeliverable.
	Recovery by Offset.
	Interest.
	Physician Does Not Refund.
	Physician Responsible for Refunding the Overpayment.
	Referral of Uncollected Physician Overpayments to HCFA.
	Large Scale Overpayments.
	Readjudication of Claims Included in Sample.
	Report of Estimates Derived from Sample.
	Disposing of the Case.
	Physician Offers to Settle on Compromise Basis.
	Person Overpaid Offers to Refund in Installments.
1317	● Guidelines for Payment of a Technical Component for Diagnostic Cardiac Catheterization.
1318	● Evidence of Medical Necessity for Home Oxygen Therapy.
1319	● Covered Speech Pathology.
1320	● Billings for Physician Assistant Services.
1321	● Statements for Assigned Claims.
	Statements for Unassigned Claims.
1322	● PRO Prior Approval for Certain Surgical Procedures.
1323	● Effect of Waiver of Coinsurance or Deductible on Carrier Determinations of Actual Charges and Customary Charges.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY–SEPTEMBER 1989—Continued

Trans. No.	Manual/Subject/Publication Number
1324	● Determining Reasonable Charge for the Services of Physician Assistants.
	Program Memorandum
	Intermediaries (HCFA-Pub. 60/A)
	(Superintendent of Documents No. HE 22.8/6–5)
A–89–4	● Interim Payment Adjustments to Target Rates for PPS Excluded Hospitals And Units Due to Extension of Hospital Benefits Under the Medicare Catastrophic Coverage Act of 1988.
A–89–5	● Implementation of Outpatient Code Editor version 4.2 and ASC.
	Pricer Revision 2.0 (Attachment to Intermediaries Only).
A–89–6	● Coverage of Epoetin for Dialysis Patients.
A–89–7	● ICD–9–CM Coding on Home Health Agency Bills.
A–89–8	● Clarification of Use of Fee Schedule/Prevailing Charge Data in Hospital Outpatient Limits.
A–89–9	● Medical Review, Outpatient Therapies.
	Program Memorandum
	Carriers (HCFA-Pub. 60/B)
	(Superintendent of Documents No. HE 22.8/6–5)
B–89–12	● Medical Review Definitions.
B–89–13	● Differentiation Between Physician Visits and Consultations (Attachment to Carriers Only).
B–89–14	● Revised Instructions for Form HCFA–484 Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy.
B–89–15	● Suspension of Payments to Providers and/or Suppliers Referred to the Office of Inspector General for Fraud or Abuse Investigations.
B–89–16	● Provider Relations for Part B Catastrophic Coverage Provisions Effective January 1, 1990.
	Program Memorandum
	Intermediaries/Carriers (HCFA-Pub. 60 A/B)
	(Superintendent of Documents No. HE 22.8/6–5)
AB–89–5	● Notice of New Interest Rate Applicable on Clean Claims.
AB–89–6	● Mass Mailing of Notice to 14+ Million Medicare Beneficiaries.
AB–89–7	● Hospital Billing for Other Diagnostic Procedure Codes.
	State Operations Manual
	Provider Certification (HCFA-Pub. 7)
	(Superintendent of Documents No. HE 22.8/12)
231	● Hospice—Multiple Locations.
	Election of Hospice Benefit by SNF or ICF Residents.
	Hospices-Citations and Description.
232	● Emphasis, Components and Applicability.
	Team Composition.
	Type of Facility—Application of SNF/ICF Regulations.
	Survey Procedures.
	Regional Office Manual
	Part 2—Medicare (HCFA-Pub. 23–2)
	(Superintendent of Documents No. HE 22.8/8)
307	● Retention of Documentation.
	Production, Scheduling, Control and Distribution.
	ACERs for Multi-Regional Contractors.
	Evaluation of Contractors Under Fixed-Price Contracts.
	Scoring Methodology.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY–SEPTEMBER 1989—Continued

Trans. No.	Manual/Subject/Publication Number
	ACER Format.
	Regional Office Manual
	Standards and Certification (HCFA-Pub. 23–4)
	(Superintendent of Documents No. HE 22.8/8–3)
42	● Alternative Sanctions for Failure to Participate in Newtwork Activities.
	Notice to ESRD Facility—Alternative Sanction for Failure to Participate With Network Goals and Objectives.
43	● Look Behind Authority of HCFA.
	Waiver Criteria for Room Size and Maximum Number of Patients Per Room for LTC Facilities.
	Meaning of Providers and Suppliers.
	Disallowance of Federal Financial Participation to a State Because the State Fails to Follow Correct Certification Procedures for Medicaid Providers.
	Options for Operating Under a Correction or Reduction Plan.
	Application of Section 1922.
	State Elects Plan of Correction Option.
	State Eelcts Reduction Plan Option.
	Hospital Manual
	(NCFA-Pub. 10)
	(Superintendent of Documents No. HE 22.8/2)
567	● Alternative Signature Option.
	Standards for Intermediary Determinations Under Alternative Signature Option.
568	● HCPCS for Hospital Outpatient Radiology Services.
	Completion to Form HCFA–1450 for Inpatient and/or Outpatient Billing.
569	● Claims Processing Timeliness.
570	● Speech Pathology Serivces Furnished By the Hospital or By Others Under Arrangements With the Hospital and Under Its Supervision.
571	● Claims Processing Timeliness.
572	● Reorganization of Manual.
573	● Special Instructions on Completion of the HCFA–1450 Billed by Hospital-Based Renal Dialysis Facilities.
	Payment of EPO.
	Christian Science Sanatorium
	Hospital Manual Supplement (HCFA-Pub. 32)
	(Superintendent of Documents No. HE 22.8/2–2)
24	● Claims Processing Timeliness.
25	● Claims Processing Timeliness.
	Home Health Agency Manual
	(HCFA-Pub. 11)
	(Superintendent of Documents No. HE 22.8/5)
224	● Definitions, Employee.
225	● Claims Processing Timeliness.
226	● Application of the General Principles to Speech Language Pathology Services.
227	● Claims Processing Timeliness.
	Skilled Nursing Facility
	(HCFA-Pub. 12)
	(Superintendent of Documents No. HE 22.8/3)
282	● Medicare as Secondary Payer for Disabled Individuals.
283	● Completion of Denial Letters.
	Submitting Beneficiary Demand Bills.
284	● Claims Processing Timeliness.
285	● Speech Pathology.
286	● Claims Processing Timeliness.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY–SEPTEMBER 1989—Continued

Trans. No.	Manual/Subject/Publication Number
	Rural Health Clinic Manual (HCFA-Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
34	● Medicare as Secondary Payer for Disabled Individuals.
35	● Claims Processing Timeliness.
36	● Claims Processing Timeliness.
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29) (Superintendent of Documents No. HE 22.8/13)
39	● Claims Processing Timeliness.
40	● Claims Processing Timeliness.
41	● Coverage and Payment of Epoetin. Completion of Form HCFA–1450 by Independent Facilities for Dialysis Items and Services Billed Under the Composite Rate.
	Hospice Manual (HCFA-Pub. 21) (Superintendent of Documents No. HE 22.8/18)
23	● Claims Processing Timeliness.
24	● Claims Processing Timeliness.
	Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9) (Superintendent of Documents No. HE 22.8/9)
88	● Medicare as Secondary Payer for Disabled Individuals.
89	● Claims Processing Timeliness.
90	● Speech Pathology.
91	● Claims Processing Timeliness.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY–SEPTEMBER 1989—Continued

Trans. No.	Manual/Subject/Publication Number
	Coverage Issues Manual (HCFA-Pub. 6) (Superintendent of Documents No. HE 22.8/14)
38	● Cardiac Output Monitoring by Electrical Bioimpedance.
39	● Speech Pathology Services for the Treatment of Dysphagia.
40	● Breast Reconstruction Following Mastectomy.
41	● Cardiac Rehabilitation Programs.
42	● Daithermy Treatment.
	Provider Reimbursement Manual, Part I (HCFA-Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
351	● Prospective Payment Rates.
	Provider Reimbursement Manual, Part I, Chapter 27 Reimbursement for ESRD and Transplant Services (HCFA-Pub. 15–1–27) (Superintendent of Documents No. HE 22.8/4)
11	● Special Circumstances. Instructions for Review and Submittal of the Cost Reporting Forms.
12	● Definitions. Phase-In. Calculation of a Facility's Composite Payment Rate. Funding of ESRD Networks. Base Composite Rates. Payment for Dialysis Treatments Under the Composite Rate.

TABLE II.—MEDICARE MANUAL INSTRUCTIONS, JULY–SEPTEMBER 1989—Continued

Trans. No.	Manual/Subject/Publication Number
	Time Period for Requesting an Exception. New Facility Exception Request. Cost Per Treatment. Frequency of Dialysis. Length of Training Period. Reimbursement for Home Dialysis Beneficiaries Who Choose to Deal Directly With the Medicare Program and Items and Services Furnished to Direct Dealing Home Dialysis Beneficiaries. Reporting Actual Costs. Inpatient Treatments. Information on Diskettes. Intermediary Review. Isolated Essential Facility. Allowable Compensation for Physician Owners and Medical Directors. Allowable Compensation for Owners, Chief Executive Officers, Administrators and Assistant Administrators.
	Medicare Carrier Quality Assurance Handbook (HCFA-Pub. 25) (Superintendent of Documents No. HE 22.8:C 23/982)
40	● Payment.

TABLE III.—REGULATIONS AND NOTICES PUBLISHED JULY–SEPTEMBER, 1989

Publication date/cite	CFR part	Title
		Final Rules
07/14/89 (42 FR 29717)	405 to 442, 447 to 483, 488 to 489, 498.	Medicare and Medicaid Programs: Requirements for Long-Term Care Facilities: Delay in Effective Date of Regulations.
08/14/89 (42 FR 33354)	484	Medicare Program; Home Health Agencies: Conditions of Participation and Reduction in Recordkeeping Requirements (Correction Published 08/23/89) (42 CFR 35131)).
08/25/89 (42 FR 35329)	403	Medicare Program; Demonstration Project to Develop a Uniform Cost Reporting System for Hospitals.
09/01/89 (42 FR 36452)	412	Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1990 rates.
09/07/89 (42 FR 37270)	413 to 424, 482 to 493	Medicare Program; Swing Bed Program Changes.
09/20/89 (42 FR 38677)	405 to 424	Medicare Program; Physician Involvement in Physical Therapy and Speech Pathology Services.
09/29/89 (42 FR 40286)	405 to 412, 413)	Medicare Program; Changes in Payment Policy for Direct Graduate Medical Education Costs.
		Proposed Rules
07/21/89 (42 FR 30558)	424	Medicare Program; Diagnosis Codes on Physician Bills.
09/01/89 (42 FR 36736)	405 to 410, 413 t 494	Medicare Program; Medicare Coverage of Screening Mammography.
09/07/89 (42 FR 37190)	410	Medicare Program; Catastrophic Outpatient Drug Benefit.
09/07/89 (42 FR 37208)	414	Medicare Program; Payment for Covered Outpatient Drugs.
09/07/89 (42 FR 37220)	400 to 417, 485 to 489	Medicare Program; Conditions of Participation for Home Intravenous Drug Therapy Providers.
09/08/89 (42 FR 37422)	410 to 424, 466 to 473).	Medicare Program; Coverage of Home Intravenous Drug Therapy Services.
09/26/89 (42 FR 39421)	435 to 436, 440	Medicare Program; Eligibility and Coverage Requirements.
		Notices
07/05/89 (42 FR 28116)		Medicare Program; Peer Review Organization; General Criteria and Standards for Evaluating Performance of Contract Obligations.
07/10/89 (42 FR 28844)		Medicare and Medicaid Programs; Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s).
07/28/89 (42 FR 31385)		Medicare and Medicaid Programs; ICD–9–M Coordination and Maintenance Committee Meeting.
07/31/89 (42 FR 31576)		Medicare Program; Peer Review Organizations; Area Designation.
08/08/89 (42 FR 32482)		Medicare and Medicaid Programs; Meeting.
08/21/89 (42 FR 34555)		Medicare Program; National Coverage Decisions (Correction Published 09/22/89) (42 FR 39077).
08/25/89 (42 FR 35395)		Medicare Program; Employer and Duplicative Medicare Benfits; Clarification.

TABLE III.—REGULATIONS AND NOTICES PUBLISHED JULY–SEPTEMBER, 1989—Continued

Publication date/cite	CFR part	Title
09/07/89 (42 FR 37239)		Medicare Program; Outpatient Prescription Drugs; List of covered Home IV Drugs.
09/19/89 (42 FR 39561)		Quarterly Listing of Program Issuances.
09/26/89 (42 FR 39814)		Medicare Program; Hospice Cap
09/29/89 (42 FR 40205)		Medicare Program; Inpatient Hospital Deductible for 1990.

IV. Medicare Coverage Issues Manual

(For the reader's convenience, changes to previously published items are in italics.)

[Transmittal No. 38; Section 50–54]

Cardiac Output Monitoring by Electrical Bioimpedance

This new section excludes from coverage the use of electrical bioimpedance to monitor cardiac output. The effective date for purposes of carrier implementation of this instruction was August 25, 1989. However, carriers may not implement this policy prior to April 19, 1990 in any way which would adversely affect a claimant. This means that carriers may not deny claims or defer decision on them based on this instruction. Carriers which have developed their own policies denying or otherwise limiting coverage for this service may retain them until this Notice becomes effective.

50–54 CARDIAC OUTPUT MONITORING BY ELECTRICAL BIOMPEDANCE-NOT COVERED

Electrical bioimpedance is a non-invasive method of using two pairs of electrodes placed on the thorax of the patient to determine stroke volume and cardiac output based upon the electrical impedance of the thorax to an externally imposed electrical current. (HCPCS code Q006 Assessment of Cardiac Output by Electrical Bioimpedance) The potential effect of long-term electrical bioimpedance has not been studied and precision and accuracy of the technique in severely ill patients has not been compared to invasive techniques. Electrical bioimpedance is not a widely accepted and established diagnostic modality, and cardiac output monitoring by electrical bioimpedance is still investigational. Cardiac output monitoring by electrical bioimpedance is, therefore, excluded from coverage at this time.

[Transmittal No. 39; Section 35–89]

Speech Pathology Services for the Treatment of Dysphagia

This new section provides for the coverage of speech pathology services for the treatment of dysphgia, regardless of the presence of a communication disability. It includes some patient selection criteria and examples of the types of therapy provided by speech pathologists. The effective date for purposes of carrier implementation of this instruction was August 28, 1989. However, carriers may not implement this policy prior to April 19, 1990, in any way which would adversely affect a claimant.

This means that carriers may not deny claims or defer decision on them based on this instruction. Carriers which have developed their own policies denying or otherwise limiting coverage for this service may retain them until this Notice becomes effective.

35–89 SPEECH PATHOLOGY SERVICES FOR THE TREATMENT OF DYSPHAGIA (Effective for services performed on and after 08/28/89.)

Dysphagia is a swallowing disorder that may be due to various neurological, structural, and cognitive deficits. Dysphagia may be the result of head trauma, cerebravascular accident, neuromuscular degenerative diseases, head and neck cancer, and encephalopathies. While dysphagia can afflict any age group, it most often appears among the elderly. Speech pathology services are covered under Medicare for the treatment of dysphagia, regardless of the presence of a communication disability.

Patients who are motivated, moderately alert, and have some degree of deglutition and swallowing functions are appropriate candidates for dysphagia therapy. Elements of the therapy program can include thermal stimulation to heighten the sensitivity of the swallowing reflex, exercises to improve oral-motor control, training in laryngeal adduction and compensatory swallowing techniques, and positioning and dietary modifications. All programs should be designed to ensure swallowing safety of the patient during oral feedings and maintain adequate nutrition.

Cross-refer: Intermediary manual, § 3101.10A; Carriers Manual, § 2216; Hospital Manual, § 210.11; Home Health Agency Manual, § 205.2C.; Skilled Nursing Facility Manual, § 230.3B.; Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual, § 205.6.

[Transmittal No. 40; Section 35-47]

Breast Reconstruction Following Mastectomy

This revised section clarifies coverage of breast reconstruction surgery following a medically necessary mastectomy. Coverage of breast reconstruction following a mastectomy has been in effect since May 15, 1980. It also includes the International Classifications of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) codes and/or the HCFA Common Procedure Code System (HCPCS) code which apply.

35–47 BREAST RECONSTRUCTION FOLLOWING MASTECTOMY (Effective for services performed on and after May 15, 1980.)

During recent years there has been a considerable change in the treatment of diseases of the breast such as fibrocystic disease, ICD–9–CM code 610.1, and cancer (breast cancer is a global term: the code listed will be specific). The codes which can be used to specify the type of breast cancer include those for malignant (primary, secondary, and cancer in situ), benign, uncertain behavior, and unspecified. Use one of the following ICD–9–CM codes: 173.5, 174.0, 174.1, 174.2, 174.3, 174.4, 174.5, 174.6, 174.7, 174.8, 174.9, 175.0, 175.9, 198.81,198.2, 216.5, 217, 232.5, 233.0, 238.3, 239.2, 293.3.

While extirpation of the disease remains of primary importance, the quality of life following initial treatment is increasingly recognized as of great concern. The increased use of breast reconstruction procedures is due to several factors:

- A change in epidemiology of breast cancer, including an apparent increase in incidence;

• Improved surgical skills and techniques;

• The continuing development of better prostheses; and

• Increasing awareness by physicians of the importance of postsurgical phychological adjustment.

Reconstruction of the breast following a medically necessary mastectomy is considered a relatively safe and effective noncosmetic procedure. A mastectomy may be simple, modified, radical, subtotal, total, unliteral, or bilateral and coded to reflect the appropriate procedure. The CPT code appropriate for indicating a mastectomy includes one of the following: 19120, 19160, 19162, 19180, 19182, 19200, 19220, 19240. The ICD–9–CM code is one of the following: 85.23, 85.34, 85.36, 85.41, 85.42, 85.43, 85.44, 85.45, 85.46, 85.47, 85.48. Accordingly, program payment may be made for breast reconstruction surgery followng removal of a breast for any medical reason. Breast reconstruction is coded to reflect the specific procedure. CPT codes applicable to breast reconstruction include 19340, 19342, 19350, 19360, 19364, 19366, 19380, or 19396. The ICD–9–CM code is one of the following: 85.53, 85.54, 85.7, 85.85, 85.87.

Program payment may not be made for breast reconstruction for cosmetic reasons. (Cosmetic surgery is excluded from coverage under section 1862(a)(10) of the Social Security Act.)

[Transmittal No. 41; Section 35–25]

Cardiac Rehabilitation Programs

This section has been revised to clarify the term "direct supervision" to mean that a physician must be immediately available and accessible but is not required to be physically present in the exercise room itself.

35–25 CARDIAC REHABILITATION PROGRAMS.

A. *General.*—Exercise programs for cardiac patients, commonly referred to cardiac rehabilitation programs, are increasingly being conducted in specialied, freestanding, cardiac rehabilitation clinics as well as in outpatient hospital departments. Exercise programs include specific types of exercise, individually prescribed for each patient.

Medicare coverage of cardiac rehabilitation programs are considered reasonble and necessary only for patients with a clear medical need, who are referred by their attending physician and (1) have a documented diagnosis of acute myocardial infarction within the preceding 12 months; or (2) have had coronary bypass surgery; and/or (3) have stable angina pectoris. Cardiac rehabilitation programs may be provided either by the outpatient department of a hospital or in a physician-directed clinic. Coverage for either program is subject to the following conditions:

• The facility meets the definition of a hospital outpatient department or a physician-directed clinic, i.e., a physician is on the premises available to perform medical duties at all times the facility is open, and each patient is under the care of a hospital or clinic physician;

• The facility has available for immediate use all the necesary cardiopulmonary emergency diagnostic and therapeutic life saving equipment accepted by the medical community as medically necessary, e.g., oxygen, cardiopulmonary resuscitation equipment, or defibrillator;

• The Program is conducted in an area set aside for the exclusive use of the program while it is in session;

• The Program is staffed by personnel necessary to conduct the program safely and effectively, who are trained in both basic and advanced life support techniques and in exercise therapy for coronary disease. Services of nonphysician personel must be furnished under the direct supervision of a physician. Direct supervision means that a *physician must be in the exercise program area and immediately available and accessible for an emergency at all times the exercise program is conducted. It does not require that a physician be physically present in the exercise room itself, provided the contractor does not determine that the physician is too remote from the patients' exercise area to be considered immediately available and accessible. The examples below are for illustration purposes only. They are not meant to limit the discretion of the contractor to make determinations in this regard.*

—The case in which a contractor determines that the presence of a physician in an office across the hall from the exercise room who is available at all times for an emergency meets the requirement that the physician is immediately available and accessible; or

—The case in which a contractor determines that the presence of a physician in a building other than that containing the exercise room does not meet the requirement that the physician is immediately available and accessible; and

• The nonphysician personnel are employees of either the physician, hospital, or clinic conducting the program and their services are "incident-to a physician's professional services."

Contractors need not undertake elaborate or costly monitoring activities to determine whether these requirements are met, but need only satisfy themselves to the extent that they ordinarily do in connection with, for example, the requirements for coverage of services in physician-directed clinics. (See Carriers Manual, § 2050.4; Intermediary Manual, § 3112.4A; Hospital Manual, § 230.4.)

In addition to the conditions listed above, coverage for cardiac rehabilitation programs furnished by hospitals to outpatients are also subject to the rules described in the Intermediary Manual, § 3112.4 and the Hospital Manual, § 230.4. Reasonable charge reimbursement for these services which are performed in "freestanding" clinics are subject to the limitations set forth in the Carriers Manual, § 5241.

B. *Diagnostic Testing—Stress Testing.*—A prospective candidate for a cardiac rehabilitation program must be evaluated for his suitability to participate. A valuable diagnostic test for this purpose is the stress test. The program need not necessarily include a stress test, but may accept one performed by the patient's attending physican. Stress testing performed in the outpatient department of a hospital or in a physician-directed clinic may be covered when reasonable and necessary for open or more of the following:

• Evaluation of chest pain, especially atypical chest pain;

• Development of exercise prescriptions for patients with known cardiac disease; and/or

• Preoperative and postoperative evaluation of patients undergoing coronary artery by-pass procedures.

Refer to subsection E, Utilization Screens, for the acceptable frequency of stress testing performed during an individual's exercise program.

ECG Rhythm Strips. ECG rhythm strips (and other ECG monitoring) constitute an important and necessary procedure which should be done periodically while a cardiac patient is engaged in a physician-controlled exercise program. See subsection E, Utilization Screens, for allowable screens.

C. *Other Diagnostic and Therapeutic Services.*—A freestanding or hospital based cardiac rehabilitation clinic may also provide diagnostic and therapeutic services other than stress testing and ECG monitoring. Any such other services must meet the usual coverage requirements for the specific service,

e.g., the incident-to, and reasonable and necessary requirements.

1. *Psychotherapy and Psychological Testing.*—It would not normally be considered reasonable and necessary to provide psychotherapy to all cardiac rehabilitation patients, or even to test all such patients to determine whether they may have a mental, psychoneurotic, or personality disorder. However, where a patient has a diagnosed mental, psychoneurotic, or personality disorder, psychotherapy furnished by a psychiatrist—or by a psychologist rendering such services incident to a physician's professional service—may be covered. Similarly, diagnostic testing of a cardiac rehabilitation patient for a mental problem may be covered where the patient shows appropriate symptoms, e.g., excessive anxiety or fear associated with the cardiac disease.

2. *Physical and Occupational Therapy.*—Physical therapy and occupational therapy would not be covered when furnished in connection with cardiac rehabilitation exercise program services covered under this section unless there also is a diagnosed noncardiac condition requiring such therapy, e.g., where a patient who is just recuperating from an acute phase of heart disease may have had a stroke which would require physical and/or occupational therapy. (While the cardiac rehabilitation exercise program may by some be considered a form of physical therapy, it is a specialized program conducted and/or supervised by specially trained personnel whose services are performed under the direct supervision of a physician.) Restrictions on coverage of physical therapy and occupational therapy under this section do not affect rules regarding coverage or noncoverage of such services when furnished in a hospital inpatient or outpatient setting.
(See Intermediary Manual, § 3101.9 and Hosptial Manual, § 210.9.)

3. *Patient Education Services.*—Many cardiac rehabilitation programs provide health education in the form of lectures or counseling in which patients and/or family members are given information, e.g., on diet, nutrition, and sexual activity to assist them in adjusting their living habits because of the cardiac condition. However, the same kind of information would have been furnished to a patient and/or family members by the attending physician following the patient's acute cardiac episode. Therefore, formal lectures and counseling on these subjects are not considered reasonable and necessary as a separately identifiable service when provided as a part of a cardiac rehabilitation exercise program. In addition, where a free-standing cardiac rehabilitation clinic provides room and board for the patient (and in some cases family members), these services are not covered under Medicare.

D. *Duration of the Program.*—Services provided in connection with a cardiac rehabilitation exercise program may be considered reasonable and necessary for up to 36 sessions, usually 3 sessions a week in a single 12 week period. Coverage for continued participation in cardiac exercise programs beyond 12 week in a single 12 week period. Coverage for continued participation in cardiac exercise programs beyond 12 weeks would be allowed only on a case-by-case basis with exit criteria taken into consideration.

Although firm exit criteria for terminating the therapeutic outpatient exercise treatment and rehabilitation program have not been established, the following guidelines have been identified as acceptable:

- The patient has achieved a stable level of exercise tolerance without ischemia or dysrhthmia;
- Symptoms of angina or dyspnea are stable at the patient's maximum exercise level;
- Patient's *resting* blood pressure and heart rate are within normal limits; or
- The stress test is not *positive* during exercise. (A *positive test* in this context implies an ECG with a junctional depression of 2mm or more associated with slowly rising horizontal, or down sloping ST segment.)

Accordingly, claims for coverage of cardiac rehabilitation exercise programs beyond 12 weeks are reviewed by the contractors' medical consultants. When claims are accompanied by acceptable documentation that the patient has not reached an exit level, coverage may be extended, but should not exceed a maximum of 24 weeks.

E. *Utilization Screens.*—Patients who participate in cardiac rehabilitation programs will require certain services more frequently than other patients being treated on an outpatient basis. Therefore, in order to provide coverge in a uniform manner, the following utilization screens should be implemented in addition to existing screens for any cardiac rehabilitation services not listed:

1. Group 1 Services

- Continuous ECG telemetric monitoring during exercise;
- ECG rhythm strip with interpretation and physician's revision of exercise prescription; and
- Limited examination for physician followup to adjust medication or other treatment changes.

A visit including one or more of this range of routine services is considered as one routine cardiac rehabilitation visit. In order for the visit to be reimbursable, at least one of the Group 1 services must be performed. The same rate of reimbursement would be allowed for each visit, but not all the services need be performed at each visit.

Allow a maximum of three visits per week.

2. Group 2 Services

- New patient comprehensive evaluation, including history, physical, and preparation of initial exercise prescription.

Allow one at the beginning of the program if not already performed by the patient's attending physican, or if that performed by the patient's attending physician is not acceptable to the program's director.

- ECG stress test (treadmill or bicycle ergometer) with physician monitoring and report.

Allow one at the beginning of the program and one after 3 months (usually the completion of the program).

- Other physician services, as needed.

[Transmittal No. 42; Section 35–41]

Diathermy Treatment

This revised section deletes any previous reference to Diapulse or to any other brand names.

35–41 DIATHERMY TREATMENT

High energy pulsed wave diathermy machines have been found to produce some degree of therapeutic benefit for essentially the same conditions and to the same extent as standard diathermy. Accordingly, where the contractor's medical staff has determined that the pulsed wave diathermy apparatus used is one which is considered therapeutically effective, the treatments are considered a covered service, but only for those conditions for which standard diathermy is medically indicated and only when rendered by a physician or incident to a physician's professional services. Further, when the charge for covered pulsed wave diathermy treatment is substantially in excess of *that which is reasonable for standard diathermy, reimbursement is based on the reasonable charge for standard diathermy (CPT–4 code 97024, ICD–9–CM code 93.34).*

Cross-refer: § 35–3

(Catalog of Federal Domestic Assistance Program No. 13.773, Hospital Insurance; and Program No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: March, 2, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-6308 Filed 3-19-90; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Panel of the National Advisory Neurological Disorders and Stroke Council; Solicitation of Public Comments for the National Panel for Research in Neurological Disorders

Notice is hereby given that the National Panel of the National Advisory Neurological Disorders and Stroke Council plans to solicit public comments in order to increase its knowledge and understanding of the needs and opportunities for research on brain and nervous system disorders in the 1990s. Information from scientists, physicians and representatives of interested organizations and institutions may be shared with the National Panel at the National Meeting for Research in Neurological Disorders on April 17, 1990, from 9 a.m. until 5 p.m., at the Department of Health and Human Services, Hubert H. Humphrey Building, Conference Room 800, 200 Independence Avenue, SW., Washington, DC.

The 1990s have been declared the Decade of the Brain by the President and the Congress. The "Decade" will bring into focus the significant opportunities in neurological research that can be realized through an expanded research effort. The Advisory Council of the National Institute of Neurological Disorders and Stroke has appointed a National Panel to frame a research plan for the implementation of the Decade of the Brain. The plan will document specific research objectives to be achieved, the steps to be initiated to achieve those objectives, and the resources required to reach the specified goals.

The attendance and the number of presentations during the conference will be limited to the time and space available. Thus, all individuals representing organizations and institutions who wish to make an oral presentation at the meeting must arrange for a written statement of their testimony to be sent to Dr. Michael D. Walker, Executive Director, National Panel for Research in Neurological Disorders. Statements must be received by Social and Scientific Systems, Inc., 7101 Wisconsin Avenue, Suite 610, Bethesda, Maryland 20814-4805, by 5 p.m., April 2, 1990. Prior notification of those desiring to present oral testimony would be helpful (complete name, affiliation, address and telephone number). Only speakers discussing subjects relevant to research in neurological disorders will be scheduled. Each speaker will be limited to 10 minutes to summarize or highlight the written statement. Those who cannot attend the meeting but would like to submit a written statement are encouraged to do so by the April 2 deadline. All statements may not exceed three pages but may include limited addenda. Any queries about the meeting may be directed to Mrs. Johanna McDonough at 301-986-4870.

Dated: March 14, 1990.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 90-6260 Filed 3-19-90; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meetings of Subcommittee on Cancer Centers

Pursuant to Public Law 92-463, notice is hereby given for two meetings to be held by the Subcommittee on Cancer Centers, National Cancer Advisory Board, National Center Institute on April 17 and on April 30 in Building 31, Conference Room 11A10, National Institutes of Health, Bethesda, Maryland 20892.

Both meetings will be open to the public from 10 a.m. to 4 p.m. to discuss the 5-Year Plan on Cancer Centers. Attendance by the public will be limited to space available.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summaries of the meetings and rosters of members, upon request.

Other information pertaining to the meetings can be obtained upon request from the Executive Secretary, Dr. Brian Kimes, National Cancer Institutes, National Institutes of Health, Executive Plaza-North, Room 300, Bethesda, Maryland 20892 (301-496-8537).

Dated: March 13, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-6261 Filed 3-19-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of Dental Research Programs Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Dental Research Programs Advisory Committee, National Institute of Dental Research, April 19-20, 1990, in the Embassy III Room of the Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland, from 9 a.m. to recess on April 19 and 9 a.m. to adjournment on April 20.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs on the causes, nature, diagnosis, treatment and prevention of oral diseases and conditions. Attendance by the public will be limited to space available.

Dr. Wayne Wray, Deputy Director for Extramural Program, NIDR, NIH, Westwood Building, Room 502, Bethesda, MD 20892 (telephone 301/496-7748) will provide a summary of the meeting, roster of committee members and substantive program information upon requestion.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institutes, National Institutes of Health.)

Dated: March 12, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-6262 Filed 3-19-90; 8:45 am]

BILLING CODE 4140-01-M

Office of Community Services

[Program Announcement No. OCS-90-1]

Request for Applications Under the Office of Community Services' Fiscal Year 1990 Discretionary Grants Program

AGENCY: Office of Community Services, FSA, HHS.

ACTION: Request for applications under the Office of Community Services' Discretionary Grants Program.

SUMMARY: The Family Support Administration, Office of Community Services [OCS] announces that competing applications will be accepted for new and continuation grants pursuant to the Secretary's discretionary authority under section 681(a)(2) of the Community Services Block Grant Act of

1981, as amended. This Program Announcement consists of seven parts:

Part A covers information on legislative authorities and defines terms used in the Program Announcement;

Part B lists the three program priority areas under which grants will be made, describes the types of projects that will be considered for funding under each priority area, and defines who is eligible to apply;

Part C provides details on application prerequisites, funds available in each priority area, limitations on grant amounts, project periods, who should benefit from the programs, and other application requirements;

Part D describes the application procedures, including the availability of forms, where and how to submit an application, the criteria used in screening and evaluating applications, and compliance with Federal requirements regarding the drug-free workplace and debarment requirements in submitting the application;

Part E describes the contents of the application package and receipt process;

Part F provides instructions for completing the SF–424 following standard Federal guidelines as well as OCS specific requirements, and describes how the project narrative should be ordered and presented; and

Part G details post-award information and reporting requirements.

CLOSING DATE: The closing date for submission of applications is May 21, 1990.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Office of State and Project Assistance, 370 L'Enfant Promenade SW., Washington, DC 20447 Telephone (202) 252–5263.

Part A—Preamble

1. Legislative Authority

Section 681(a)(2) of the Community Services Block Grant Act authorizes the Secretary to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities.

2. Departmental Goals

The Secretary has established a broad Departmental goal of strengthening American families and has instituted several objectives to help realize this goal. OCS believes that two of those objectives are particularly relevant to this program, i.e. assisting homeless families and implementing the Family Support Act, particularly the JOBS program. Also, of interest to the Secretary are activities that address the needs of minority families.

3. Definition of Terms

For purposes of this Program Announcement the following definitions apply:

Affiliate: an entity which has legal and/or financial ties to a community development corporation, and which also meets the statutory requirement that it be governed by a board consisting of residents of the community and business and civic leaders.

Community development corporation: a private, locally initiated, nonprofit entity, governed by a board consisting of residents of the community and business and civic leaders, which has a record of implementing economic development projects or whose Articles of Incorporation and/or By-Laws indicate that it has a focus in the area of economic development.

Displaced worker: An individual who is in the labor market but has been unemployed for six months or longer.

Distressed community: A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

Eligible applicant: (See appropriate Priority Area under part B.)

Indian tribe: A tribe, band, or other organized group of Indians recognized in the State in which it resides or which is considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

Migrant farmworker: An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

Rural: An area that is not within the outer boundary of a metropolitan entity having a population of 25,000 or more and contiguous communities with a population density of 100 persons or more per square mile according to the latest decennial census. Such an area may be located entirely within one State or made up of contiguous interstate communities.

Seasonal farmworker: Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

Part B—Program Priority Areas

The program priority areas of the Office of Community Services' Discretionary Grants Program and their purposes are as follows:

Priority Area 1.0 Urban and Rural Community Economic Development
- 1.1 Urban and Rural Community Economic Development/Set-Aside

Priority Area 2.0 Assistance for Rural Housing and Community Facilities Development
- 2.1 Rural Housing Repairs and Rehabilitation
- 2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Priority Area 3.0 Assistance for Migrants and Seasonal Farmworkers
- 3.1 Assistance for Migrants and Seasonal Farmworkers/Set-Aside

Priority Area 1.0 Urban and Rural Community Economic Development

The purpose of this priority area is to encourage the creation of projects intended to provide employment and business development opportunities for low-income people through business, physical or commercial development, and generally to improve the quality of the economic and social environment of low-income residents, including displaced workers, at-risk teenagers, individuals residing in public housing, and individuals who are homeless. It is intended to provide resources to eligible applicants but also has the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas.

To this end, the program also seeks to attract additional private capital into distressed communities, including enterprise zones, and to build and/or expand the ability of local institutions to better serve the economic needs of local residents.

Applicants located in State-designated enterprise zones, i.e. an area in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are urged to submit applications. Such projects must be linked with—and complement—enterprise zone initiatives, and may request funds for a business development project or a project that demonstrates innovative ways to involve the poverty community in the implementation of the enterprise zone concept.

Applications must show that the proposed project:

(1) Creates full-time permanent jobs or will maintain existing jobs which otherwise would be lost without OCS funds. Seventy-five percent (75%) of those jobs created must be filled by low-income residents of the community and must provide for career development opportunities. Project emphasis should be on employment of individuals who are unemployed or on public assistance.

with particular emphasis on at-risk teenagers, individuals residing in public housing, and individuals who are homeless. While projected employment in future years may be included in the application, it is essential that the focus of employment projections concentrate on those jobs created or saved during the duration of the OCS project period; and/or

(2) Creates a significant number of business development opportunities for low-income residents of the community or significantly aids such residents in maintaining economically viable businesses.

In the evaluation process, favorable consideration will be given to applicants under this priority area who show the lowest cost-per-job created or saved. Unless there are extenuating circumstances, OCS will not fund projects where the cost-per-job in OCS funds exceeds $15,000.

Any funds that are proposed to be used for training purposes must be limited to providing specific job-related training to those poverty level individuals who have been selected for employment in the grant supported project or who have been selected for training or participation in a project where potential jobs have already been identified.

OCS encourages applications that create linkages with community organizations administering the JOBS program which will train and place residents dependent on public assistance into jobs created by the project funded under this priority area.

Projects which would result in the relocation of a business from one geographic area to another with the possible displacement of employees are discouraged.

OCS will not consider applications that propose to establish or expand revolving loan funds, nor proposals that are geared toward the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

OCS does not anticipate approving the funding of applications which propose to sub-grant all or most of the activities to an unrelated entity, with the exception of applications eligible for the special set-aside fund described below.

Applicants must be aware that projects funded under this priority area must be operational by the end of the project period, i.e. businesses must be in place, and low-income individuals actually employed in those businesses.

Eligible applicants are private, locally initiated, non-profit community development corporations (or affiliates of such corporations) governed by a board consisting of residents of the community and business and civic leaders which sponsor enterprises providing employment and business development opportunities for low-income residents of the community designed to increase business and employment opportunities in the community.

See part F, 4, d, for special instructions on developing a work program for this priority area.

1.1 Urban and Rural Community Economic Development/Set-Aside

For Fiscal Year 1990, a set-aside fund of $2.5 million will be included under this priority area for eligible applicants that submit projects that will be carried out in conjunction with Historically Black Colleges and Universities through contract or sub-grant. Such projects must conform to the purposes, requirements, and prohibitions applicable to those submitted under Priority Area 1.0.

These projects should reflect a significant partnership role for the college or university and the applicant in doing so will be considered to have fulfilled the goals of the Public-Private Partnerships evaluation criterion and will be granted the maximum number of points in that category. Applications for these set-aside funds which are not funded due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants.

See part F, 4, d, for special instructions on developing a work program for this priority area.

Priority Area 2.0 Assistance for Rural Housing and Community Facilities Development

2.1 Rural Housing Repairs and Rehabilitation

The purpose of this priority area is to assist low-income residents in rural communities by providing grants to eligible applicants to: (a) provide technical assistance to help low-income families and individuals more effectively utilize existing local, State and Federal housing assistance programs; and (b) develop innovative ways to meet the housing needs of low-income people, e.g., the rehabilitation or repair of existing substandard housing units for occupancy by low-income residents, the conversion of non-residential buildings to low-income residential use, and the purchase of homes by low-income people.

OCS encourages applications that will assist low-income homeowners to improve their housing through self-help rehabilitation. These applications should not include projects which can be funded through other existing Federal programs.

OCS also encourages the submission of proposals whose aim is to assist homeless families and those at risk of homelessness. Innovative ways to address housing needs of homeless families is of particular interest to OCS.

Projects should produce the following types of tangible improvements and benefits related to housing conditions for rural poor people; interior or exterior structural repairs including weatherization and alternative energy systems; jobs created for local unskilled residents while assuring quality work; technical assistance and professional services related to housing and community planning by community-based design and planning organizations. (Such projects should be conducted with maximum use of voluntary services of professional and community personnel, and development of innovative housing strategies to help low-income rural residents acquire housing.)

Applications calling for new construction or "gut" rehabilitation will only be considered if the application documents that there is insufficient existing housing stock that can be economically rehabilitated.

Funds will not be available for the repair or rehabilitation of low-income rental housing unless the structure is either occupied by a low-income owner or the properties to be repaired are (a) owned by a private non-profit organization and (b) covered by a written agreement which will ensure continued occupancy by low-income people for at least three years after completion of repairs and rehabilitation.

Funds will not be available under this program priority area for projects that establish or expand a revolving loan fund.

Eligible applicants are States, public agencies or private non-profit organizations, including Historically Black Colleges and Universities.

OCS is particularly interested in receiving applications from such entities as rural housing development corporations, cooperatives, and other public and private organizations with proven accomplishments in the area of rural housing.

See part F, 4, d, for special instructions on developing a work program for this priority area.

2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Funds will be provided under this priority area to help low-income rural communities develop the capability and expertise to establish and/or maintain affordable, adequate and safe water and waste water treatment facilities.

Funds provided under this priority area may not be used for construction of water and waste water treatment systems or for operating subsidies for such systems, but other mobilized funds may be used for these activities. Therefore, it is suggested that applicants coordinate projects with the Farmers Home Administration (FmHA) and other Federal and State agencies to ensure that funds for hardware for local community projects are available.

Eligible applicants are public or private non-profit organizations, including Historically Black Colleges and Universities. In accordance with the authorizing legislation, funding priority will be given to private non-profit organizations that, before the date of the enactment of the Human Services Reauthorization Act of 1986, carried out such programs under the authority found at section 681(a)(2)(D) of the Community Services Block Grant Act.

See part F, 4, d, for special instructions on developing a work program for this priority area.

Priority Area 3.0 Assistance for Migrants and Seasonal Farmworkers

The purpose of this priority area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrants and seasonal farmworkers in order to improve their quality of life and advance self-sufficiency.

OCS will entertain proposals that directly meet farmworker needs in such areas as: homelessness; crisis nutritional relief; the development of self-help systems of food production; emergency health and social services referral and assistance; home repair, rehabilitation, and ownership; direct assistance to low-income farmworkers, including at-risk teenagers, to improve their job skills for them to qualify for long-term and permanent full-time employment in agriculture; and/or assistance to low-income farmworkers, including at-risk teenagers, who wish to leave agricultural employment and find jobs in other lines of wherever appropriate.

Applicants must provide quantifiable objectives for each of the above activities which will be included in the project. OCS encourages applicants to develop linkages with other public and private sector service providers who also are working with migrant and seasonal farmworkers or with issues affecting this target group.

For projects that relate to job skills and training, OCS will not consider applications proposing to use funds exclusively for classroom instruction. Placement must be an integral activity of any training project.

Applications submitted under this priority area must not contain requests for OCS funding for projects that would duplicate Community Services Block Grant funding or activities for which funding is available from other Federal agencies such as the Department of Labor, the Department of Agriculture's Food and Women, Infants and Children (WIC) programs, etc.

Eligible applicants are States, public agencies and private non-profit organizations including Historically Black Colleges and Universities.

See Part F, 4, d, for special instructions on developing a work program for this priority area.

3.1 Assistance for Migrants and Seasonal Farmworkers/Set-Aside

Set-Aside

For Fiscal Year 1990, a fund of $300,000 will be set aside for Historically Black Colleges and Universities to enable them to offer continuing education to migrant and seasonal farmworkers and to increase participant employment opportunities. Applicants must provide quantifiable objectives for each of the activities which will be included in the project. Applications which are not funded within this set-aside due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants.

See part F, 4, d, for special instructions on developing a work program for this priority area.

Part C—Application Prerequisites

1. Eligible Applicants

Priority areas included in this Program Announcement have differing eligibility requirements. Therefore, eligible applicants are identified in the individual priority area descriptions found in Part B, above.

2. Availability of Funds

a. FY 90 Funds

The Office of Community Services expects to award approximately $27,085,489 in the fourth quarter of Fiscal Year 1990 for new grants. The funding expected to be available for each Priority Area is summarized below:

Priority Area	Fiscal year 1990 funds
1.0 Urban and Rural Community Economic Development	$20,157,615
1.1 Urban and Rural Community Economic Development/Set-Aside	2,500,000
2.0 Assistance for Rural Housing and Community Facilities Development	3,993,903
3.0 Assistance for Migrants and Seasonal Farmworkers	2,933,971
3.1 Assistance for Migrants and Seasonal Farmworkers/Set-Aside	300,000

b. Grant Amounts

No more than $500,000 will be granted for projects under any priority area with the exception noted below.

Under Priority Area 3.1, no more than $75,000 will be granted for a project.

3. Project Period

For Priority Areas 1.0, 1.1, 2.1, and 3.0: applicants may request project periods of up to 17 months for non-construction projects and up to 24 months for construction projects.

For Priority Area 2.2 only: applicants should request 24 month project periods (SF 424A, Budget Information, section E). While the project periods assigned to successful applicants will be 24 months, the initial awards of grant funds will have budget periods of only one year. Subsequent awards of funds will depend upon satisfactory performance by the grantee and on the availability of appropriated funds.

4. Mobilization of Resources

OCS will give favorable consideration in the review process to applicants who document public/private partnerships which mobilize cash and/or third-party in-kind contributions. (See part D, Criterion IV.)

5. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits to low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the guidelines currently in effect (1990). Annual revisions of these guidelines are normally published in the Federal Register in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S.

Government Printing Office, Washington, DC 20402.

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs.

Note, however, that low-income individuals granted lawful temporary resident status under sections 245A or 210A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (Public Law 99–603) may not be eligible for direct or indirect assistance based on financial need under this program for a period of five years from the date such status was granted. A copy of the Department of Justice Final Rule (8 CFR 245a.5) details the eligibility of these aliens and may be obtained by calling (202) 252–5263. Organizations funded under any priority area of the Discretionary Grants Program will be required to comply with the referenced provisions of Public Law 99–603.

6. Number of Projects in Application

An application may contain only one project (although activities undertaken may be in a number of communities or impact areas) and this project must be identified as responding to one of the program priority areas stated in this announcement. Applications which are not in compliance with this requirement will be ineligible for funding.

7. Multiple Submittals

There is no limit to the number of applications that can be submitted under a specific program priority area as long as each application contains a proposal for a different project.

8. Sub-contracting or Delegating Projects

OCS does not fund projects where the role of the applicant is *primarily* to serve as a conduit for funds to organizations other than the applicant.

Part D—Application Procedures

1. Availability of Forms

Attachments B, C and D contain all of the standard forms necessary for the application for awards under these OCS programs. These forms may be photocopied for the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled "**FOR FURTHER INFORMATION**" at the beginning of this announcement.

For purposes of this announcement, all applicants will use SF–424, SF–424A, and SF–424B, regardless of the priority area governing the project. Applications proposing construction projects will also present all required financial data using SF–424A. Instructions for completing the SF–424, SF–424A, and SF–424B are found in Attachments B, C, and D and Part F.

Part F contains instructions for the project narrative. The project narrative will be submitted on plain bond paper along with the SF–424 and related forms.

Attachment J provides a checklist to aid applicants in preparing a complete application package for OCS.

The application will consist of:

(a) Standard Form 424, "Application for Federal Assistance" (SF–424);

(b) "Budget Information-Non-Construction Programs" (SF–424A);

(c) "Assurances-Non-Construction Programs" (SF–424B); and

(d) the Project Narrative.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in attachments E and F.

2. Application Submission

Applications must be submitted to FSA by the closing date. Refer to "Closing Date" at the beginning of this document for the specific date.

Applications may be mailed to:

Family Support Administration, Office of Grants Management, 6th Floor OFM/DGM, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at:

Family Support Administration, Office of Grants Management, Sixth Floor, 901 D Street, SW., Washington, DC 20447.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office.

Late applications will be returned to the senders without consideration in the competition.

Applications once submitted are considered final and no additional materials will be accepted by OCS.

One signed original application and four copies is required. The first page of the SF–424 must contain in the lower right-hand corner, a designation indicating under which priority area funds are being requested. The following letter program priority area designations must be used:

UR—for Priority Area 1.0. Urban and Rural Community Economic Development

HB—for Priority Area 1.1. Urban and Rural Community Economic Development/Set-Aside

RH—for Priority Area 2.1. Rural Housing Repairs and Rehabilitation

RF—for Priority Area 2.2. Rural Commuity Facilities Development (Water and Waste Water Treatment Systems Development)

MS—for Priority Area 3.0. Assistance for Migrants and Seasonal Farmworkers

HM—for Priority Area 3.1. Assistance for Migrants and Seasonal Farmworkers/Set-Aside

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovenmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Minnesota, Nebraska, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible to alert them of the prospective applications and receive

any necessary instructions, so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. Therefore, the comment period for State processes will end on August 21, 1990, to allow time for FSA to review, consider and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to FSA, they should be addressed to: Department of Health and Human Services, Family Support Administration, Office of Grants Management, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Appendix G of this announcement.

4. Application Consideration

Applications which meet the screening requirements in sections 5 a. and b. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and evaluation criteria published in this announcement.

Applications submitted under all priority areas will be reviewed by persons outside of the OCS unit which will be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including: comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applicants

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in Part F and Attachments B, C, and D of this Program Announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(4) The application must be submitted for consideration under one priority area only.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCAS staff prior to the programmatic review to verify that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements for the priority area under which funds are being requested. Proof of non-profit status must be included in the Appendices of the Project Narrative where applicable. Applicants must also be aware that the applicant's legal name as required in SF–424 (Item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Number of Projects:* The application contains only one project which responds to one of the priority areas in this announcement.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries.

(4) *Grant amount:* The amount of funds requested does not exceed the limits indicated in part C, 2, b for the appropriate priority area.

(5) *Program focus:* The application addresses the purposes described under the relevant program priority area description in Part B of this announcement.

An application will be disqualified from the competition and returned if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained under each program priority area as described in part B.

(Note: the following review criteria reiterate collection of information requirements contained in part F of this announcement. These requirements are approved under OMB Control Number 0970–0062.)

Criteria for Review and Evaluation of All Applications

(a) *Criterion I: Analysis of Need (Maximum: 5 points)*—

The application documents that the project addresses a vital need in a distressed community and provides statistics and other data and information in support of its contention.

(b) *Criterion II: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 15 points)*—

(i) *Organizational Experience in Program Area* (subrating: 0–5 points):

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population.

Organizations which propose providing training and technical assistance have detailed competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related

achievements and competence of each cooperating or sponsoring organization.

Applicable to Priority Areas 1.0 and 1.1

The applicant has demonstrated: the ability to implement major activities in such areas as business development, commercial development, physical development, or financial services; the abiltiy to mobilize dollars from sources such as the private sector (corporations, banks, etc.), foundations, the public sector, including State and local governments, or individuals; that it has a sound organizational structure and proven organizational capability; and an ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities, and other benefits to community residents.

(ii) *Staff Skills, Resources and Responsibilities* (0–10 points):

The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

(c) *Criterion III: Project Implementation* (Maximum: 25 points)—

The work plan, or Business Plan where appropriate, is both sound and feasible. The project is responsive to the needs identified in the Analysis of Need. It sets forth realistic quarterly time targets by which the various work tasks will be completed. Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be reasonably attained despite such potential problems.

(d) *Criterion IV A: (Applicable to Priority Area 1.0 and 1.1) Significant and Beneficial Impact (Maximum: 30 points)*—

(i) *Significant and Beneficial Impact* (sub-rating: 0–15 points):

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the community. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income communities, distressed communities, and/or designated enterprise zones.

(ii) *Cost-per-Job* (sub-rating: 0–10 points):

During the project period the proposed project will create new, permanent jobs or maintain permanent jobs for low-income residents at a cost-per-job below $15,000 in OCS funds. [Note: The maximum number of points will be given to those applicants proposing cost-per-job estimates of $5,000 or less of OCS requested funds. Higher cost-per-job estimates will receive correspondingly fewer points.]

(iii) *Career Development Opportunities* (sub-rating: 0–5 points):

The application documents that the jobs to be created for low-income people have career development opportunities.

Criterion IV B: (Applicable to Priority Areas 2.1., 2.2., 3.0 and 3.1)—

Significant and Beneficial Impact (Maximum: 30 points)

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. Results are quantifiable in terms of program area expectations, e.g. number of units of housing rehibilitated, agricultural and non-agricultural job placements, etc. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income and/or distressed communities and/or designated enterprise zones.

(e) *Criterion V: Public-Private Partnerships (Maximum: 20 points)*—

The application documents that the applicant will mobilize from public and/or private sources cash and/or inkind contributions valued at an amount equal to the OCS funds requested. Applicants documenting that the value of such contributions will be at least equal to the OCS funds requested will receive the maximum number of points for this Criterion. Lesser contributions will be given consideration based upon the value documented. Applicants under Priority Area 1.0 who are proposing to enter into a partnership with Historically Black Colleges and Universities are deemed to have fully met this criterion and will receive the maximum number of points.

(f) *Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points)*—

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget break-down for each of the budget categories in the SF–424A. The applicant presents a reasonable administrative cost. The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application, whether involving construction or not, must include one original and four additional copies of the following:

a. a signed "Application for Federal Assistance" (SF–424);

b. "Budget Information-Non-Construction Programs" (SF–424A);

c. a signed "Assurances-Non-Construction Programs" (SF–424B);

d. a Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(i) Eligibility Confirmation;

(ii) Analysis of Need;

(iii) Organizational Experience and Staff Responsibilities;

(iv) Work Program;

(v) Appendices, including By-Laws; Articles of Incorporation; proof of non-profit status where applicable; Single Pint of Contact comments if applicable; and résumés.

The original must bear the signature of the authorizing representative of the applicant organization.

The total number of pages for the entire application package should not exceed 50 pages.

Applications should be submitted in ring-binders that will allow for easy separation and reassembly.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ X 11 inch paper only. They must not include colored, oversize or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.

2. Acknowledgment of Receipt

All applicants will receive an acknowledgment postcard with an

assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgment postcard. This number and the program priority area letter code must be referred to in all subsequent communication with OCS concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify FSA by telephone (202) 252–4586.

Part F—Instructions for Completing Application Package

(Approved by the Office of Management and Budget under Control Number 0970–0062)

The standard forms attached to this announcement shall be used to apply for funds for all priority areas described in this announcement.

It is suggested that you reproduce the SF–424 and SF–424A, and type your application on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "Not Applicable."

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

1. SF–424 "Application for Federal Assistance" Item

1. For the purposes of this announcement, all projects are considered "Applications"; there are no "Pre-Applications." Also for the purposes of this announcement, construction projects are those which involve major renovations or construction. All others are considered non-construction. Check the appropriate box under "Application."

2–4. As described in instructions.

5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status must be included in the documentation of the project narrative.

8. For the purposes of this announcement, all applications are "New" with the possible exceptions of those submitted under Priority Area 2.2. These applications should be marked "Continuation" if the applicants received funds from OCS in fiscal year 1989 for similar projects.

9. Enter "Office of Community Services, Family Support Administration, Department of Health and Human Services."

10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 13.793. The title is "CSBG Discretionary Awards."

2. SF–424A—"Budget Information—Non-Construction Programs"

See Instructions accompanying this form as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS discretionary funds only, and "Non-Federal" will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS discretionary funding should be included in "Non-Federal" entries.

The budget forms in SF–424A are only to be used to present grant administrative costs and major budget categories. Financial data that is generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Clearly identified continuation sheets in SF–424A format should be used as necessary.

Section A—Budget Summary

Lines 1–4

Col. (a):

Line 1 Enter "CSBG Discretionary";

Col. (b):

Line 1 Enter "13.793";

Col. (c) and (d):

Columns (c) and (d) should be completed only by those applicants requesting funds for continuation grants (Priority Area 2.2 only), and show the amounts of funds which will be needed after the first 12 month period. All other applicants should leave columns (c) and (d) blank.

Column (e)–(g):

For line 1, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the budget period.

Line 5 Enter the figures from Line 1 for all columns completed as required, (c), (d), (e), (f), and (g).

Section B—Budget Categories

Allowability of costs are governed by applicable cost principles set forth in 45 CFR Parts 74 and 92.

Columns (1) and (5):

In OCS applications, it is only necessary to complete Columns (1) and (5).

Column 1: Enter the total requirements for OCS Federal funds by the Object Class Categories of this section:

Personnel-Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits-Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j. Provide a breakdown of amounts and percentages that comprise fringe benefit cost.

Travel-Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Line 21 for additional instructions).

Equipment-Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having an acquisition cost per unit of $500 or more for non-profit organizations and $5,000 or more for public organizations and having a useful life of one year. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Line 21 for additional requirements.)

Supplies-Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual-Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the

organization, the purpose of the contract and the estimated dollar amount of the award. If the name of contractor, scope of work, or estimated total are not available or have not been negotiated, include these in Line h, "Other".

Note.—Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of this form (SF-424A), completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction-Line 6g: Enter the costs of renovation, repair, or new construction. Provide narrative justification and breaddown of costs.

Other-Line 6h: Enter the total of all other costs. Such costs, where applicable, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges-Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges-Line 6j: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another Federal agency. With the exception of local governments, applicants should enclose a copy of the current rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates*, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Totals-Line 6k: Enter the total amounts of Lines 6i and 6j. The total amount shown in Section B, Column (5), Line 6k, should be the same as the amount shown in Section A, Line 5, Column (e).

Program Income-Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or substract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Section C—Non-Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. "Non-Federal" resources mean other than OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act program, should be entered on these lines. Provide a brief listing of the non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the Public-Private Partnerships criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Line 8:

Column (a): enter the project title.

Column (b): Enter the amount of contributions to be made by the applicant to the project.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Lines 9, 10, and 11 should be left blank.

Line 12:

Carry the total of each column of Line 8, (b) through (e). The amount in column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

To be completed by applicants applying under Priority Area 2.2 only.

Section F—Other Budget Information

Line 21—Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Included sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative.

D. Contractual: Major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23—Provide any other explanations and continuation sheets

required or deemed necessary to justify or explain the budget information.

3. SF-424B "Assurances-Non-Construction"

All applicants must sign and return the "Assurances" with the application.

4. Project Narrative

The project narrative must address the specific concerns mentioned under the relevant priority area description in Part B. The narrative should provide information on how the application meets the evaluation criteria in Part D, Section 5c of this Program Announcement and should follow the format below:

a. Eligibility Confirmation

This section must explain how the applicant has complied with each of the basic requirements listed in part D, 5b (1)–(5), i.e. (1) that the applicant meets the eligibility requirements for the priority area under which funds are being requested; (2) the application contains only one project which responds to one of the priority areas in the announcement; (3) the application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries; (4) the amount of funds requested does not exceed the limits indicated in part C, section 2, b for the appropriate priority area; and (5) the application addresses the purposes described in part B of the announcement.

b. Analysis of Need

The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. It should also include documentation supportive of its needs assessment such as employment statistics, housing statistics, etc.

c. Organizational Experience and Staff Responsibilities

(i) *Organizational Experience.* Each applicant must document competence in the specific program priority area under which an application is submitted.

Documentation must be provided which addresses the relevance and effectiveness of projects previously undertaken in the specific priority area for which funds are being requested and especially their cost effectiveness, the relevance and effectiveness of any services provided, and the permanent benefits provided to the low-income population. Organizations which propose providing training and technical assistance must detail their competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization.

Applicable to Priority Areas 1.0 and 1.1

Applicants in these priority areas must also document a firmly established and quantifiable performance record that shows the following:

—The ability to implement major activities such as business development, commercial development, physical development, or financial services;
—Successful working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;
—A sound asset base and organizational structure in terms of (a) net worth, (b) management stability, and (c) organizational capability;
—An ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities and other benefits to community residents, and impact on community-wide economic problems and needs;
—Sound administrative and fiscal systems and controls, and the ability to establish and maintain partnerships with the private sector in such forms as financial support, volunteerism or executives on loan.

(ii) *Staff Skills, Resources and Responsibilities.* The application must fully describe (e.g. a resume or position description) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project.

The application must include statements regarding who will have the responsibilities of the chief executive officer, who will be responsible for grant coordination with OCS, and how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

d. Work Program

The application must contain a detailed and specific work program, or Business Plan where appropriate, that is both sound and feasible. (For those applicants submitting proposals under Priority Areas 1.0 and 1.1, the Business Plan will be accepted in lieu of the work program.)

The work program will be evaluated according to Criteria III, IV, and V set forth in Part D of this announcement: Project Implementation, Significant and Beneficial Impact, and Public-Private Partnerships.

Projects funded under this announcement must be designed to produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. The OCS grant funds, in combination with private and/or other public resources, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones. Projects must be designed to achieve the specific program priority area objectives defined in this Program Announcement.

It must set forth realistic quarterly time targets by which the various work tasks will be completed. It must identify critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained despite such potential problems.

If an applicant is proposing a project which will affect a property listed in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF–424B, Item 13 for additional guidance.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for funding consideration.

Applicable to Priority Areas 1.0 and 1.1

Applications submitted under Priority Areas 1.0 and 1.1 must include a complete Business Plan where it is appropriate to the project/venture. An application that does not include a Business Plan where one is appropriate may be disqualified and returned to the applicant.

In some cases a Business Plan may not be required under this Priority Area. All applicants under this Priority Area, however, must nevertheless submit the information which is required in sections 7 through 10, as set forth below.

The Business Plan is one of the major components that will be evaluated by OCS to determine the feasibility of an economic development project. It must be well prepared and address all the major issues noted herein.

The following guidelines show what should be included in order to produce a complete and professional Business Plan which makes an orderly presentation of the facts necessary to be judged responsive to the program announcement.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

The Business Plan should include the following:

1. *The business and its industry.* This section should describe the nature and history of the business and provide some background on its industry.

a. *The Business:* as a legal entity; the general business category;

b. *Description and Discussion of Industry:* Current status and prospects for the industry.

2. *Products and Services:* This section deals with the following:

a. *Description:* Describe in detail the products or services to be sold.

b. *Proprietary Position:* Describe proprietary features if any of the product, e.g. patents, trade secrets.

c. *Potential:* Features of the product or service that may give it an advantage over the competition.

3. *Market Research and Evaluation:* This section should present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition.

a. *Customers:* Describe the actual and potential purchasers for the product or service by market segment.

b. *Market Size and Trends:* State the size of the current total market for the product or service offered.

c. *Competition:* An assessment of the strengths and weaknesses of competitive products and services.

d. *Estimated Market Share and Sales:* Describe the characteristics of the product or service that will make it competitive in the current market.

4. *Marketing Plan:* The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. *Design and Development Plans:* If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

6. *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. *Management Team:* The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills, and experience in doing what is proposed. This section must include a description of: the key management personnel and their primary duties; compensation and/or ownership; the organizational structure; Board of Directors; management assistance and training needs; and supporting professional services.

8. *Overall Schedule:* A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, and production and operations. Sufficient detail should be included to show the timing of the primary tasks required to accomplish each activity.

9. *Critical Risks and Assumptions:* The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture.

10. *Community Benefits:* The proposed project must contribute to economic, community and human development within the project's target area. A section that describes and discusses the potential economic and non-economic benefits to low-income members of the community must be included as well as a description of the strategy that will be used to identify and hire individuals being served by public assistance programs and how linkages with community agencies/organizations administering the JOBS program will be developed.

The following project benefits must be described:

Economic

—Number of permanent jobs that will be created for low-income people during the grant period;
—Number of jobs to be created for low-income people that will have career development opportunities and a description of those jobs;
—Number of jobs that will be filled by individuals on public assistance;
—Ownership opportunities created for poverty-level project area residents.

Other benefits which might be discussed are:

Human Development

—New technical skills development and associated career opportunities for community residents;
—Management development and training.

Community Development

—Development of community's physical assets;
—Provision of needed, but currently unsupplied, services or products to community;
—Improvement in the living environment.

11. *The Financial Plan:* Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the first three years of the business' operation:

a. Profit and Loss Forecasts—quarterly for each year;

b. Cash Flow Projections—quarterly for each year;

c. Pro forma balance sheets—quarterly for each year;

d. Initial sources of project funds;

e. Initial uses of project funds; and

f. Any future capital requirements and sources.

Applicable to Priority Area 2.1 Only

Each applicant must include a full discussion of the project including the following information:

—*Basic Housing Data for Targeted Area.* Information on the number of sub-standard housing units available to low-income people in the target area, deficiencies of the housing units to be repaired, i.e., lack of or inadequate plumbing, upgrading of electrical systems, etc., new construction inventory, property values, rents and mortgage rates. While specific census data may be included, this information must be project specific. Applicants must show that other Federal programs do not exist to address the rehabilitation needs of the targeted area.

—*Priorities.* Provide a rationale for the strategies and priorities for which OCS support is requested.

—*Participant Application Process.* A description of the participant application process including: (a) verification of participant need and income eligibility, (b) proposed diagnostic repair forms and contract bid procedures (where applicable), and (c) completion verification and quality workmanship assurance procedures.

—*Types of Work to be Performed.* The quantitative and qualitative measures in the work plan should reflect the types of work to be performed, e.g. (a) technical assistance and training for each proposed organization/community; and/or (b) repairs or rehabilitation or construction work, noting which types of work will be done in order to bring properties up to minimum housing standards, inspection procedures and construction schedules.

Applications proposing to repair or rehabilitate low-income rental housing (see Part B, Priority Area 2.1, regarding restrictions) must state the current rents for the units in question as well as what rents will be charged for the rehabilitated units. Applicants should also state the number of low-income residents who will be helped to purchase or acquire adequate housing.

—*Job Creation.* Data regarding the number of direct jobs that will be created in the proposed project, noting the number of low-income residents that will be trained and/or placed in these jobs.

—*Public-Private Partnership.* A description of the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project and the amount of dollars which will be mobilized.

Applicable to Priority Area 2.2 Only

Each applicant must include a full discussion of how the proposed use of funds will enable low-income rural communities to develop the capability and expertise to establish and maintain affordable, adequate and safe water and waste water systems. Applicants must also discuss how they will disseminate information about water and waste water programs serving rural communities, and how they will better coordinate Federal, State, and local water and waste water program financing and development to assure improved service to rural communities.

Among the benefits that merit discussion under this priority area are: The number of rural communities to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by applicant-supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant-supported treatment systems (all of the above may be expressed in terms of equivalent connection units); the increase in local capacity in engineering and other areas of expertise; and the amount of non-discretionary program dollars expected to be mobilized.

Applicants who define measurable benefits in terms of equivalent connection units (ECUs) should indicate the number of connection units to be completed during the grant program year.

Applicable to Priority Areas 3.0 and 3.1

Each applicant must include a full discussion of the proposed project and how it will address one or more farmworker needs as described in part B.

Among the benefits which merit discussion under this priority area are: The number of farmworkers who are expected to improve their agricultural skills and thus improve their agricultural employment situation; the number of farmworkers and/or their dependents who will be afforded an opportunity to continue their formal education; the number of farmworkers/families who will receive crisis nutritional relief, emergency health and social services referrals and assistance, and assistance in the development of self-help systems of food production; the number of farmworkers who are expected to gain longer term or permanent private sector employment in areas outside agriculture; the number of farmworkers who will receive help in the areas of housing; the number of housing units to be repaired or rehabilitated; the degree and kind of such help; the amount of non-Discretionary program dollars expected to be mobilized, and the degree of private sector involvement that will be utilized in developing and carrying out projects funded under this announcement.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total financial participation from the award recipient.

General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, are subject to the provisions of 45 CFR Parts 74 and 92.

Grantees will be required to submit quarterly progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excees of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to

lobbyists have been or will be made out of nonappropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the *nonappropriated* funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Discretionary Grants Program.

Dated: March 8, 1990.

Eunice S. Thomas,

Director, Office of Community Services.

ATTACHMENT A—1990 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guidelines
1	$6,280
2	8,420
3	10,560
4	12,700
5	14,840
6	16,980
7	19,120
8 [1]	21,260
Poverty Income Guidelines for Alaska:	
1	7,840
2	10,520
3	13,200
4	15,880
5	18,560
6	21,240
7	23,920
8 [2]	26,600
Poverty Income Guidelines for Hawaii:	
1	7,230
2	9,690
3	12,150
4	14,610
5	17,070
6	19,530
7	21,990
8 [3]	24,450

[1] For family units with more than 8 members, add $2,140 for each additional member.

[2] For family units with more than 8 members, add $2,680 for each additional member.

[3] For family units with more than 8 members, add $2,460 for each additional member.

BILLING CODE 4150-04-M

ATTACHMENT B. SF–424, "Application for Federal Assistance."

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

ATTACHMENT C. SF–424A, "Budget Information-Non-Construction Programs."

(Note: Also to be used for construction programs.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

ATTACHMENT D. SF-424B, "Assurances-Non-Construction Programs."

(Note: Also to be used for construction programs.)

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Attachment E—U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of the grant, or governmentwide suspension or debarment.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) the dangers of drug abuse in the workplace;

(2) the grantee's policy of maintaining a drug-free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) make it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) abide by the terms of the statement; and

(2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;

(1) taking appropriate personnel action against such an employee, up to and including termination; or

(2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state or local health, law enforcement, or other appropriate agency;

(g) Making good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), and (f).

B. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, state, zip code):

_____

_____

_____

Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certfies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for casue or default;

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification; The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below without modifications in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Attachment G—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 1700 West Washington Avenue, Fourth Floor, Phoenix, Arizona 85007, Telephone (602) 542–5004

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, Telephone (202) 727–9111

Florida

George H. Meier, Director of Intergovernmental Coordination, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, Growth Management and Planning Policy Unit, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548–3016 or 548–3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Robert Lenoard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Louisiana

Robin Hote, Division of Administration, Office of State Clearinghouse, P.O. Box 94095, Baton Rouge, Louisiana 70804–9095, Telephone (504) 342–7006

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Mary Abrams, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 904, Boston, Massachusetts 02202, Telephone (617) 727–3253

Michigan

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48903, Telephone (517) 375–1838

Please direct correspondence to: Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, Michigan 48911, Telephone (517) 334–6190

Mississippi

Cathy Mallette, Governor's Office of Federal State Programs, Department of Planning and Policy, 421 West Pascagoula Street, Jackson, Mississippi 39206, Telephone (601) 960–4282

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Montana

Deborah Davis, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Lieutenant Governor, Capitol Station, Room 210—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

Nevada

Jean Ford, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 885–4420

Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator

New Hampshire

Robert W. Varney, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

Dean Olson, Director, Management & Program Analysis Division, Department of Finance & Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3885

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, P.O. Box 26980, Oklahoma City, Oklahoma 73126, Telephone (405) 843–9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, N.E., Salem, Oregon 97310, Telephone (503) 373–1998

Pennsylvania

Laine A. Heltebridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783–3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0435

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Thomas C. Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 533–5245

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

Washington

Catherine Townley, Coordinator, Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Olympia, Washington 98504–4151, Telephone (206) 753–4973

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Telephone (608) 266–1741

Please direct correspondence and questions to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750

Attachment H—Restrictions on Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief that:

If any funds have been paid or will be paid to any person for influencing or

attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Signature

Organization

Date

BILLING CODE 4150-04-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

Attachment I—DHHS Regulations Applying to All Applicants/Grantees Under the Discretionary Grants Program

The following DHHS regulations apply to all applicants/grantees under the Discretionary Grants Program:

Title 45 of the *Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Sections 74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Nonprofit organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income
Part 75—Informal Grant Appeals Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Nondiscrimination: Under Programs Receiving Federal Assistance through the Department of Health and Human Services. Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedure for Hearings Under Part 80 of this Title
Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs
Part 84—Nondiscrimination on the Basis of Handicap in Programs
Part 91—Nondiscrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J—Checklist for Use in Submitting OCS Grant Applications

The application should contain:

1. A completed, *signed* SF–424, "Application for Federal Assistance". The letter code for the priority area should be in the lower right-hand corner of the page;
2. A completed "Budget Information-Non-Construction" (SF–424A);
3. A *signed* "Assurances-Non-Construction" (SF–424B);
4. A Project Narrative beginning with a Table of Contents that describes the project in the following order:
   (a) Eligibility Confirmation
   (b) Analysis of Need
   (c) Organizational Experience and Staff Responsibilities
   (d) Work Program
   (e) Appendices, including proof of Non-Profit Status, ByLaws, Articles of Incorporation, State Single Point of Contact comments, if applicable, and resumes;
5. A *signed* copy of Certification Regarding Lobbying;
6. A completed Disclosure of Lobbying Activities form, if appropriate;
7. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application.

The application should not exceed a total of 50 pages. It should include one original and four identical copies, printed on white 8½ by 11 inch paper, and be presented in a ring binder.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.

[FR Doc. 90–5799 Filed 3–19–90; 8:45 am]
BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirements and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the OMB Interior Desk Office at (202) 395–7340.

Title: 25 CFR Part 41—Grants to Tribally Controlled Community.

OMB approval number: 1076–0018.

Colleges and Navajo Community College, Grant Application.

Abstract: Indian Education—Tribally Controlled Community Colleges. The information collected through this form provides the basis for the size of grant paid to the Tribally Community Colleges.

Frequency: Annually.

Description of Respondents: Tribally Controlled Community Colleges and the Navajo Community College.

Annual Responses: 22.

Annual Burden Hours: 66 hours.

Alternate Bureau Clearance Officer: Gail Sheridan-Craddock, 343–1685.

Dated: March 3, 1990.

Edward F. Parisian,

Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs).

[FR Doc. 90–6271 Filed 3–19–90; 8:45 am]
BILLING CODE 4310–02–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirements and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the OMB Interior Desk Office at (202) 395–7340.

Title: 25 USC part 41—Grants to Tribally Controlled Community Colleges and Navajo Community College: Annual Reports.

OMB Approval Number: 1076–0018

Abstract: Native American Education, Community Colleges—Information generated by the annual report from the Tribally Controlled Community Colleges will be compiled for program evaluation and statistical data. This information will be used as the basis for reports to Congress.

Frequency: Annually.

Description of Respondents: Tribally Controlled Community Colleges and the Navajo Community College.

Annual Responses: 22

Annual Burden Hours: 66 hours

Bureau Clearance Officer: Gail Sheridan-Craddock, 343–1685.

Dated: March 5, 1990.

Edward F. Parisian,

Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs).

[FR Doc. 90–6301 Filed 3–19–90; 8:45 am]
BILLING CODE 4310–02–M

Bureau of Land Management

[UT–08–00–4910–10–4174]

Realty Action; Segregation of Public Lands for Exchange, Uintah County, Utah

AGENCY: Bureau of Land Management (BLM), Utah, Interior.

ACTION: Notice of intent to prepare an environmental assessment and plan amendment; Notice of Realty Action, Segregation of public lands for exchange, Uintah County, Utah.

SUMMARY: Notice is hereby given that the Bureau of Land Management, Vernal District, is proposing to prepare a plan amendment and environmental assessment to consider an exchange of public lands in the Diamond Mountain Resource Area. The Utah Division of Wildlife Resources (UDWR) has proposed to exchange property they own, located within Dinosaur National Monument, for public lands located near Vernal, Utah. This notice will also serve to segregate the selected public lands from the operation of the public land laws and the mining laws.

SUPPLEMENTARY INFORMATION: The following lands have been examined and identified as potentially suitable for exchange with the UDWR:

Salt Lake Meridian, Utah

T. 1 S., R. 24 E., sec. 15, W½SW¼, NE¼SE¼; sec. 24, W½NW¼; containing 200.00 acres more or less.

These public lands would be exchanged for UDWR lands located within Dinosaur National Monument. Acquisition of these State lands would improve management of Dinosaur National Monument by reducing the amount of non-Federal lands within the monument. The plan to be amended is the Diamond Mountain Management Framework Plan.

Issues to be considered in the preparation of the environmental assessment will include, but not be limited to, the following resources: Wildlife habitat, recreation, watershed, land uses, paleontological and cultural resources, and threatened and endangered plants and animals. An interdisciplinary team will be used to prepare the environmental assessment and plan amendment.

Publication of this notice in the Federal Register segregates the public lands identified from the operation of the public land laws, including the mining laws. The segregative effect will end upon issuance of a patent, or two years from the date of publication, whichever occurs first.

DATES: The public, state, and local governments and other federal agencies are asked to participate in the plan amendment process. For a period of 45 days from the date of publication of this notice in the Federal Register, written comments may be submitted to the District Manager at the address listed below.

All comments will be considered in preparing the plan amendment. Any adverse comments by interested parties concerning the segregation of the public lands will be evaluated by the State Director who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Written comments should be addressed to: David Little, District Manager, Vernal District Office, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Massey, Realty Specialist, Vernal District Office, 170 South 500 East, Vernal, Utah 84078.

Dated: March 9, 1990.

James M. Parker,

State Director.

[FR Doc. 90-6291 Filed 3-19-90; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

Farmington Wild and Scenic River Study; Massachusetts and Conecticut; Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 s 10), that a meeting of the Farmington River Study Committee will be held Thursday, April 5, 1990.

The Committee was established pursuant to Public Law 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Farmington River segments.

The meeting will convene at 7:30 p.m. at the Riverton Volunteer Fire House, Riveton, Connecticut, for the following purposes:

1. Welcome, introductions and study overview.
2. Approval of minutes from 2/8/90.
3. Discussion of budget status.
4. Reports from Subcommittee:

A. Water Resources Subcommittee.

i. Report of 3/6/90 meeting and plans for Public Workshop on Subcommittee's work planned for later April.

ii. Update on U. Mass/Water Resources Research Center's work on the "Water Supply Needs Assessement for Greater Hartford".

B. River Conservation Planning and Public Involvement.

i. Evaluation of Existing Protection and Vulnerability.

ii. Local Committee members' progress on discussing critical resource maps with town officials.

iii. Public Involvement: "Common Questions and Answers" handout; landowner and resident survey.

5. Progress on state land acquisition efforts in Massachusetts and Connecticut.
6. Opportunity for public comment.
7. Other business.

A. Next meeting dates and locations.

Interested persons may make oral/written presentations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park Service, North Atlantic Region, 15 State Street, Boston, MA 02109, (617) 223-5199.

Dated: March 13, 1990.

Steven H. Lewis,

Deputy Regional Director.

[FR Doc. 90-6269 Filed 3-19-90; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 10, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by April 4, 1990.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

New Haven County

Route 146 Historic District, Rt. 146 between Flat Rock Rd. and West River bridge, Branford, 90000569

FLORIDA

BROWARD COUNTY

Seaboard Air Line Railway Station, Old, 1300 W. Hillsboro Blvd., Deerfield Beach, 90000597

GEORGIA

Cahoun County

Arlington Methodist Episcopal Church, South, Pioneer Rd. at Dogwood Dr., Arlington, 90000572

Emanuel County

Durden, Albert Meal, House, Co. Rd. 360, Emanuel vicinity, 90000561

MAINE

Cumberland County

Longfellow, Henry Wadsworth, Monument, SE corner of State and Congress Sts., Portland 90000580

Hancock County

Dix Family Stable, Rt. 102A, Bass Harbor, 90000578

East Blue Hill Library, Miliken Rd., East Blue Hill, 90000577

Lincoln County

Cora F. Cressey, Keene Marrows, Bretten, 90000586

Hesper and Luther Little, Wiscasset waterfront off Water St., Wiscasset, 90000589

Oxford County

Osgood Family House, Main St., Fryeburg, 90000576

Washington County

Holmes, Dr. Job, House, 247 Main St., Calais, 90000579

West Quoddy Lifesaving Station (Lifesaving Stations of Maine MPS), N side W. Quoddy Head, Lubec vicinity, 90000581

MARYLAND

Anne Arundel County

Benson-Hammond House, Poplar Ave., Linthicum Heights vicinity, 90000595

Somerset County

Tawes, Capt. Leonard, House, Somerset Ave., Crisfield, 90000598

MICHIGAN

Dickinson County

Immaculate Conception Church, 500 E. Blaine St., Iron Mountain, 90000562

Kent County

Thornapple River Drive Bridge, Thornapple River Dr. over Thornapple River, Cascade Township, 90000570

Saginaw County

Morseville Bridge, Burt Rd. at Flint River, Taymount Township, 90000573

Shiawassee County

Frieseke, Julius, House, 529 Corunna Ave., Owosso, 90000574

NEBRASKA

Cheyenne County

Herboldsheimer, Daniel and Sarah, Ranch, NE of Potter, Potter vicinity, 90000566

Knox County

Commercial Hotel, The, 117 Main St., Verdigre, 90000563

Pawnee County

Rad Jan Kollar cis 101 Z. C. B. J., ADDRESS RESTRICTED, DuBois vicinity, 90000567

Saline County

Saline County Bank, E of SR 15 in downtown Western, Western, 90000568

Valley County

Bruha, Josef, and Anna Beran, House, W of Elyria, Burwell vicinity, 90000564

Wheeler County

A.T. Ranch Headquarters, Star Rt. 1, Bartlett vicinity, 90000565

NEW MEXICO

Eddy County

Baskin Building, 332 W. Main St., Artesia, 90000599

Sandoval County

Archeological Site No. AR-03-10-03-620 (Jemez Cultural Developments in North-Central New Mexico MPS), ADDRESS RESTRICTED, Jemez Springs vicinity, 90000590

Borrego Mesa Agricultural Site (Jemez Cultural Developments in North-Central New Mexico MPS), ADDRESS RESTRICTED, Jemez Springs vicinity, 90000591

Jemez Cave (Jemez Cultural Developments in North-Central New Mexico MPS), ADDRESS RESTRICTED, Jemez Springs vicinity, 90000593

Virgin Mesa Rock Art Site (Jemez Cultural Developments in North-Central New Mexico MPS), ADDRESS RESTRICTED, Jemez Springs vicinity, 90000592

NORTH DAKOTA

Grand Forks County

Larimore City Hall, Block 64, bounded by Towner, 3rd, Terry and Main, Larimore, 90000600

OHIO

Franklin County

Fifth Avenue and North High Historic District (Short North MPS), N. High St. roughly between 4th Ave. and Clark Pl., Columbus, 90000584

Short North Historic District (Short North MPS), N. High St. roughly between Poplar St. and Cedar Ave., Columbus, 90000583

Third Avenue and North High Historic District (Short North MPS), N. High St. in the vicinity of 2nd and 3rd, Columbus, 90000585

RHODE ISLAND

Washington County

Rodman, Gen. Isaac Peace, House, 1789 Kingstown Rd., South Kingstown, 90000596

TENNESSEE

Bedford County

East Shelbyville Historic District, Bounded roughly by N. Brittian, Louisville & Nashville railroad tracks, Lane, Evans, Sandusky and Madison Sts., Shelbyville, 90000594

VIRGINIA

Newport News Independent City

DOROTHY (tugboat), 4101 Washington Ave., Newport News, 90000587

WASHINGTON

Skagit County

LA MERCED, Anacortes Waterfront off Oakes Ave., Anacortes, 90000588

WISCONSIN

Green Lake County

Beckwith, Nelson F., House, 179 E. Huron St., Berlin, 90000575

Vernon County

Skumsrud, Mils, House, SE of jct. of SR 162 and U.S. 14/61, Coon Valley vicinity, 90000571

Walworth County

Metropolitan Block, 772 Main St., Lake Geneva, 90000559

Waukesha County

Nelson, Charles E., Sr., House, 520 N. Grand Ave., Waukesha, 90000560

The following property is also being considered for listing in the National Register but was erroneously omitted from a previous list:

OHIO

Mahoning County

Wick Park Historic District, Roughly bounded by 5th and Park Aves., Elm St. and Broadway 90000601

The following property was published on a previous list with incorrect geographic location information, the correct location is:

MARYLAND

Harford County

Proctor House, 54 E. Gordon St., Bel Air, 90000376

[FR Doc. 90-6270 Filed 3-20-90; 8:45 am]

BILLING CODE 4310-70-M

U.S. World Heritage Nomination Process; Calendar Year 1990

AGENCY: National Park Service, Department of the Interior.

ACTION: Public notice and request for comment.

SUMMARY: The Department of the Interior, through the National Park Service, announces the process that will be used in calendar 1990 to identify possible U.S. nominations to the World Heritage List. This notice lists the properties that are included in the Inventory of Potential Future U.S. World Heritage Nominations and solicits public comments and suggestions on properties that should be considered as potential U.S. World Heritage nominations this year. This notice identifies the requirements that U.S. properties must satisfy to be considered for nomination and references the rules

that the Department of the Interior has adopted to implement the World Heritage Convention. In addition, this notice contains the criteria which cultural or natural properties must satisfy for World Heritage status, and lists the 17 U.S. properties inscribed on the World Heritage List as of January 1, 1990.

DATES: Comments or suggestions of cultural or natural properties as potential 1991 U.S. World Heritage nominations must be received within 60 days of this notice. Comments should pertain to the merits of properties included on the Inventory or others which the respondent believes should be considered for nomination to the World Heritage List in 1990. Comments should also specify how the recommended property satisfies one or more of the World Heritage criteria. The Department will decide the issue of nominations for this year and will publish the decision in the **Federal Register**, with a request for further public comment in the event that potential nominations are identified. Comments on potential United States nominations which may be listed must be received within 30 days of the second notice. In the event that nominations are favorably identified and received, the Department of the Interior will subsequently publish in the **Federal Register** a final list of proposed 1991 U.S. World Heritage nominations. A detailed nomination document will be prepared for each such proposed nomination. In November the Federal Interagency Panel for World Heritage will review the accuracy and completeness of draft 1991 United States nominations and will make recommendations to the Department of the Interior. The Assistant Secretary for Fish and Wildlife and Parks will subsequently transmit approved nomination(s) on behalf of the United States to the World Heritage Committee Secretariat, through the Department of State, by December 15, 1990, for evaluation by the World Heritage Committee.

ADDRESSES: Written comments or recommendations should be sent to the Director, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127. Attention: World Heritage Convention-023.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Milne, Chief, Office of International Affairs, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127 (202/343–7063).

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 110 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world. The Convention complements each participating nation's heritage conservation programs and provides for:

(a) The establishment of an elected 21-member World Heritage Committee to further the goals of the Convention and to approve properties for inclusion on the World Heritage List;

(b) The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;

(c) The preparation of a List of World Heritage in Danger;

(d) The establishment of a World Heritage Fund to assist participating countries in identifying, preserving, and protecting World Heritage properties;

(e) The provision of technical assistance to participating countries, upon request; and

(f) The promotion and enhancement of public knowledge and understanding of the importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List. The World Heritage Committee reviews and evaluates all nominations against established criteria. Under the Convention each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in title IV of the National Historic Preservation Act Amendment of 1980 (Pub. L. 96–515; 16 U.S.C. 470a–1, a–2). On May 27, 1982, the Interior Department published in the **Federal Register** the policies and procedures which are used to carry out this legislative mandate (47 FR 23392). The rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status (i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment).

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks and includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Land Management within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; Forest Service, Department of Agriculture; the U.S. Information Agency; and the Department of State.

I. Potential U.S. World Heritage Nominations

The Department encourages any agency, organization, or individual to submit written comments on how one or more properties on the U.S. World Heritage Indicative Inventory which follows or other qualified property, relates to and satisfies one or more of the World Heritage criteria (section II of this notice). In order for a U.S. property to be considered for nomination to the World Heritage List, it must satisfy the requirements set forth earlier (i.e., (a) it must have previously been determined to be of national significance, (b) its owner must concur in writing to such nomination, and (c) its nomination document must include evidence of such legal protections as may be necessary to preserve the property and its environment). Information provided by interested parties will be used in evaluating the World Heritage potential of a particular cultural or natural property.

The following properties were published in the **Federal Register** on May 6, 1982, as the Inventory of Potential Future U.S. World Heritage Nominations (47 FR 19648) and amended in 48 FR 38100). The Inventory discusses

briefly the significance of each site, and identifies the specific World Heritage criteria that the sites appear to satisfy. The properties included on the Inventory, minus properties nominated in intervening years, are as follows:

Natural

Acadia National Park, Maine
Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge, Alaska
Arches National Park, Utah
Arctic National Wildlife Refuge, Alaska
Big Bend National Park, Texas
Bryce Canyon National Park, Utah
Canyonlands National Park, Utah
Capitol Reef National Park, Utah
Carlsbad Caverns National Park, New Mexico
Colorado National Monument, Colorado
Crater Lake National Park, Oregon
Death Valley National Monument, California
Denali National Park, Alaska
Gates of the Arctic National Park, Alaska
Glacier Bay National Park, Alaska
Grand Teton National Park, Wyoming
Guadalupe Mountains National Park, Texas
Haleakala National Park, Hawaii
Joshua Tree National Monument, California
Katmai National Park, Alaska
Mount Ranier National Park, Washington
North Cascades National Park, Washington
Okefenokee National Wildlife Refuge, Georgia-Florida
Organ Pipe Cactus National Monument/ Cabeza Prieta National Wildlife Range, Arizona
Point Reyes National Seashore, California
Rainbow Bridge National Monument, Utah
Rocky Mountain National Park, Colorado
Saguaro National Monument, Arizona
Sequoia/Kings Canyon National Parks, California
Virginia Coast Reserve, Virginia
Zion National Park, Utah

Cultural

Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge (Fur Seal Rookeries), Alaska
Auditorium Building, Illinois-Chicago
Bell Telephone Laboratories, New York-New York City
Brooklyn Bridge, Brooklyn, New York
Cape Krusenstern Archaeological District, Kotzebue, Alaska
Carson, Pirie, Scott and Company Store, Chicago, Illinois
Casa Grande National Monument, Coolidge, Arizona
Chapel Hall, Gallaudet College, District of Columbia
Eads Bridge, Illinois-Missouri
Fallingwater, Mill Run, Pennsylvania
Frank Lloyd Wright Home and Studio, Oak Park, Illinois
General Electric Research Laboratory, Schenectady, New York
Goddard Rocket Launching Site, Auburn, Massachusetts
Hohokam Pima National Monument, Arizona
Leiter II Building, Chicago, Illinois
Lindenmeier Site, Colorado
Lowell Observatory, Flagstaff, Arizona
Marquette Building, Chicago, Illinois
McCormick Farm and Workshop, Walnut Grove, Virginia
Mound City Group National Monument, Ohio
Moundville Site, Alabama
New Harmony Historic District, New Harmony, Indiana
Ocmulgee National Monument, New Mexico
Poverty Point, Bayou Macon, Louisiana
Prudential (Guaranty) Building, Buffalo, New York
Pupin Physics Laboratories, Columbia University, New York
Reliance Building, Chicago, Illinois
Robie House, Chicago, Illinois
Rookery Building, Chicago, Illinois
San Xavier Del Bac, Tucson, Arizona
Savannah Historic District
South Dearborn Street-Printing House Row North Historic District, Chicago, Illinois
Taliesin, Spring Green, Wisconsin
Trinity Site, Bingham, New Mexico
Unity Temple, Oak Park, Illinois
Ventana Cave, Arizona
Wainwright Building, St. Louis, Missouri
Warm Springs Historic District, Georgia
Washington Monument, District of Columbia

Additional information on each of the properties listed above may be found in the May 6, 1982, **Federal Register** notice (47 FR 19648) which includes a description of the properties on the U.S. World Heritage inventory. This notice is available from the National Park Service (see addresses). Written comments are welcome on these and other qualified properties.

II. World Heritage Criteria

The following criteria are used by the World Heritage Committee in evaluating the World Heritage porential of cultural and natural properties nominated to it:

A. Criteria for the Inclusion of Cultural Properties on the World Heritage List

(1) A monument, group of buildings or site which is nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria *and* the test of authenticity. Each property nominated should therefore:

(i) Represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or town planning and landscaping; or

(iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. (The Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria); and In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders; and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

(B) Criteria for the Inclusion of Natural Properties on the World Heritage List

(1) A natural heritage property which is submitted for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria and fulfills the conditions of integrity set out below. Properties nominated should therefore:

(i) Be outstanding examples representing the major stages of the earth's evolutionary history; or

(ii) Be outstanding examples representing significant ongoing geological processes, biological evolution, and man's interaction with his natural environment as distinct from the periods of the earth's development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms, and marine areas and fresh water bodies; or

(iii) Contain superlative natural phenomena, formations or features, for instance, outstanding examples of the most important ecosystems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements; or

(iv) Contain the foremost natural habitats where threatened species of animals or plants of outstanding universal value from the point of view of science or conservation still survive.

(2) In addition to the above criteria, the sites should also fulfill the conditions of integrity:

(i) The sites described in (i) above should contain all or most of the key

interrelated and interdependent elements in their natural relationship; for example, an "ice age" area would be expected to include the snow field, the glacier itself, and samples of cutting patterns, deposition, and colonization (striations, moraines, pioneer stages of plant succession, etc.).

(ii) The sites described in (i) above should have sufficient size and contain the necessary elements to demonstrate the key aspects of the process and to be self-perpetuating. For example, an area of "tropical rain forest" may be expected to include some variation in elevation above sea level, changes in topography and soil types, river banks or oxbow lakes, to demonstrates the diversity and complexity of the system.

(iii) The sites described in (ii) above should contain those ecosystem components required for the continuity of the species or of the other natural elements or processes/objects to be conserved. This will vary according to individual cases; for example, the protected area of a waterfall would include all, or as much as possible, of the supporting upstream watershed; or a coral reef area would include the zone necessary to control siltation or pollution through the stream flow or ocean currents which provide its nutrients.

(iv) The sites containing threatened species as described in (iv) above should be of sufficient size and contain necessary habitat requirements for the survival of the species.

(v) In the case of migratory species, seasonal sites necessary for their survival, wherever they are located, should be adequately protected. The Committee must receive assurances that the necessary measures be taken to ensure that the species are adequately protected throughout their full life cycle. Agreements made in this connection, either through adherence to international conventions or in the form of other multilateral or bilateral arrangements, would provide this assurance.

(3) The property should be evaluated relatively, that is, it should be compared with other properties of the same type, both inside and outside the country's borders, within a biogeographic province, or migratory pattern.

III. World Heritage list

As of January 1, 1990, the World Heritage Committee had approved the following 17 cultural and natural properties in the United States for inscription on the World Heritage List (the World Heritage List currently includes 322 properties worldwide).

Cahokia Mounds State Historic Site
Chaco Culture Sites
Everglades National Park
Grand Canyon National Park
Great Smoky Mountains National Park
Hawaii Volcanoes National Park
Independence Hall
Mammoth Cave National Park
Mesa Verde National Park
Monticello/University of Virginia; Jeffersonian Precinct
Olympic National Park
Redwood National Park
San Juan National Historic Site and La Fortaleza
The Statute of Liberty
Wrangell-St. Elias National Park
Yellowstone National Park
Yosemite National Park

Dated: March 7, 1990.

Constance B. Harrison,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90-6280 Filed 3-19-90; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that on March 7, 1990 a proposed consent decree in *United States* v. *Findett Corporation*, Civil Action No. 90-0417-C-6 was lodged with the United States District Court for the Eastern District of Missouri. The proposed consent decree involves claims by the United States pursuant to CERCLA for recovery of clean-up costs incurred and to be incurred at the Findett/Hayford Bridge Road Ground Water Site in St. Charles County, Missouri as well as claims for injunctive relief.

The proposed consent decree requires the defendants to perform the Operable Unit Remedial Action selected in the Record of Decision issued by the United States Environmental Protection Agency ("EPA") on December 28, 1988, which specifies installation and operation of a ground water extraction, treatment, and disposal system; installation, sampling, and analysis of ground water monitoring wells, if necessary; and cleanup of surface soil contamination of Findett's property and any PCB-contamination on nearby property which was the result of Findett's activities. In addition, defendant is required to reimburse EPA up to $50,000 for cost of oversight of the soil cleanup. In return, the defendants are given a release from claims relating to the work to be performed and costs to be paid pursuant to the Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Findett Corporation*, D.J. Ref. No. 90-11-2-417.

The proposed consent decree may be examined at the Office of the United States' Attorney for the Eastern District of Missouri, room 414, United States Court and Custom House, 114 Market Street, St. Louis, Missouri 63101 and at the Region VII Office of the United States Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $20.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-6228 Filed 3-19-90; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-21]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATES: March 27, 1990, 8:30 a.m. to 5:30 p.m., March 28, 1990, 8:30 a.m. to 1:15 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 226A, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code EB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1525).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on a long-range plan for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Life Sciences Subcommittee provides advice to the Life Sciences Division concerning all of its programs in the space life sciences. The Subcommittee will meet to discuss Life Sciences status and issues, activities of the Office of Space Science and Applications, receive reports on Life Sciences activities, and new starts for 1992. The Subcommittee is chaired by Dr. Francis J. Haddy and is composed of 22 members. The meeting will be closed on March 28 from 11 a.m. to 12:15 p.m. to discuss and evaluate qualifications of candidates being considered for membership on the Subcommittee. Such discussions would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the capacity of the room (approximately 45 inlcuding Subcommittee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

Type of Meeting: Open—except for a closed session as noted in the agenda below.

Agenda

Tuesday, March 27
8:30 a.m.—Introduction and Chairman's Remarks.
8:45 a.m.—Office of Space Science and Applications

Status

9:30 a.m.—Life Science Status.
10:45 a.m.—Reports on Activities of Other Advisory

Committees

11:15 a.m.—Summary of Life Sciences Activities.
1:30 p.m.—1992 New Start Candidates.
4:30 p.m.—Revision of "Rationale for the Life Sciences Document

5:30 p.m.—Adjourn.
Wednesday, March 28
8:30 a.m.—New Start Activities for 1992.
9:30 a.m.—Plant Research: Gravitational Biology and Controlled Ecological Life Support Systems (CELSS)
11 a.m.—Closed Session.
12:15 p.m.—Committee Strategy and Actions.
1:15 p.m.—Adjourn.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-6277 Filed 3-19-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Presidential Libraries

This notice is published in accordance with the provisions of section 9(a)((2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advised of the renewal of the Advisory Committee on Presidential Libraries for a two-year period, until April 1, 1992.

The Archivist of the United States has determined that the renewal of this advisory committee is in the public interest so that the National Archives and Records Administration receives ongoing advice on its Presidential library programs.

Dated: March 14, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90-6296 Filed 3-19-90; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards; Solicitation for Comments

AGENCY: National Communications System.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agenices, industry, the public, and state and local government on proposed Federal Standard 1044; "Telecommunications: Interoperability Requirements for Trunked Land Mobile Radio Systems Operating with Analog and 25 kHz Channel Digital Radios".

DATES: Comments should be received by June 19, 1990.

ADDRESSES: Send comments to the National Communications System, Attn: Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, National Communications System, tel. (202) 692-2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards.

2. Prior to adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and state and local government.

3. Note that the first draft of proposed Federal Standard 1044 does not contain specific binary values for the operation codes specified. Also, specific details on optional dynamic reprogramming features are not provided. It is intended that this information will be publically disclosed in future drafts of the proposed standard.

4. The NCS Office of Technology and Standards has a letter on file, dated May 12, 1989, offering to license patents that may be required to implement this standard. The terms offered are described in this letter. No other potential patent holders are known.

5. Requests for copies of the first draft of proposed Federal Standard 1044 and the patent licensing offer on file should be directed to the Office of Technology and Standards, National Communications System, Washington, DC 20305-2010.

Dennis Bodson,

Assistant Manager, NCS Technology and Standards.

Suggested Highlight

The Office of Technology and Standards, National Communications System (NCS), invites comments on proposed Federal Standard 1044; "Telecommunications: Interoperability Requirements for Trunked Land Mobile Radio Systems Operating with Analog and 25 kHz Channel Digital Radios".

[FR Doc. 90-6341 Filed 3-19-90; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-275 and 50-323]

Pacific Gas and Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-80 and DPR-82, issued to the Pacific Gas and Electric Company (PG&E or the licensee) for operation of the Diablo Canyon Nuclear Power Plant (DCPP) Units 1 and 2 located in San Luis Obispo County, California.

The amendments would revise the combined Technical Specifications (TS) for DCPP Unit Nos. 1 and 2 relating to the schedule for removal of the Boron Injection Tank (BIT). Specifically, the revised TS would allow the BIT removal to be implemented at the fourth refueling outage for both units. The current TS require the BIT removal to be implemented at the third refueling outage for Unit 2 and the fourth refueling outage for Unit 1. The proposed amendments were requested by the licensee's letter of March 14, 1990.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee, in its submittal of March 14, 1990, evaluated the proposed change against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed change does not involve a significant hazards consideration. The licensee's evaluation is as follows:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will result in the same condition that was originally assumed in the safety analyses with the BIT. This change is administrative and will only extend the in service time for the Unit 2 BIT for one additional fuel cycle. The changes to TS Table 3.3-5 provide for consistency with the previous analyses, performed with the BIT installed, and will only be applicable during Units 1 and 2 Cycle 4. The Unit 2 BIT has been recently inspected and the evaluation has determined that it is structurally satisfactory for continued operation.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

This change is administrative and only extends the operability requirement of the BIT and associated heat tracing channels through Unit 2 Cycle 4 operation. The change to the ESF response times will ensure that all assumptions of the safety analyses are met.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

As discussed above, the proposed change will result in the same condition that was originally assumed in the safety analyses with the BIT. The change to the ESF response times ensures that the safety analyses assumptions with the BIT installed are satisfied.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The Commission has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, based on the above considerations, the Commission proposes to determine that these changes do not involve significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 19, 1990, licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity and interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the

petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner must also provide references to those specific sources and douments of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, nowithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the request for amendments involve a significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place before the issuance of the amendments.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Charles M. Trammell: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated March 14, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland this 15th day of March, 1990.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–6334 Filed 3–19–90; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2643, Variances for Sale of Assets

AGENCY: Pension Benefit Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (OMB No. 1212–0021) contained in its regulation on Variances for Sale of Assets (29 CFR part 2643). The collection of information pertains to requests for variances of statutory requirements by employers that sell assets of businesses covered by multiemployer pensions plans, and by employers that buy such assets, in transactions structured to avoid the imposition of withdrawal liability. Current approval of this collection of information expires on March 31, 1990. The effect of this notice is to advise the public of the PBGC's request for an extension of OMB's approval.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0021), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street,

NW., Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Variances for Sale of Assets, 29 CFR part 2643. Under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (sections 4201–4225), if an employer's covered operations or obligation to contribute under a multiemployer plan ceases, the employer is generally liable to pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception when the cessation results from a sale of assets if certain conditions are met. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide that the seller will be secondarily liable if the buyer withdraws within a specified period after the sale and fails to pay withdrawal liability (section 4204(a)(1)(B) and (C)). Section 4204(c) authorizes the PBGC to vary the bond/escrow and sale-contract requirements by regulation if the variance would "more effectively or equitably carry out the purposes of [title IV]" and to grant individual or class variances or exemptions from those requirements when warranted.

Pursuant to this authority, the PBGC has issued its regulation on Variances for Sale of Assets (29 CFR part 2643). Subpart A of the regulation establishes procedcures for requesting individual variances of the bond/escrow and sale-contract requirements from the PBGC. Section 2643.2(d) and (e) describes the information that must be submitted with a request. Subpart B of the regulation establishes general variances of the bond/escrow and sale-contract requirements and authorizes plans to determine whether the variances apply in particular cases. Section 2643.11(c) prescribes the information to be included in requests to a plan. These information collection requirements are necessary to give PBGC and plans adequate information to determine whether a variance request meets the applicable statutory or regulatory standards, respectively.

Based on past experience, the PBGC estimates the 15 variance requests per year will be submitted by employers to plans, and that 5 requests per year will be submitted to the PBGC. The PBGC expects that each request to a multiemployer plan will take the requester about two hours to complete and the plan two hours to process, for a total of 60 burden hours. Each request to the PBGC should also take the requester two hours to prepare, for an annual burden of 10 hours. Thus, the aggregate annual burden of the public from this collection of information is 70 hours.

Issued at Washington, DC this 19th day of March, 1990.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 90-6286 Filed 3-19-90; 8:45 am]

BILLING CODE ??—M

POSTAL SERVICE

Privacy Act of 1974; Computer Matching Programs

AGENCY: Postal Service.

ACTION: Notice of altered computer matching programs.

SUMMARY: The Postal Service is amending computer matching agreements and thereby altering continuing programs established under the Office of Management and Budget's 1982 Computer Matching Guidelines to bring them into conformance with the provisions of The Computer Matching Privacy and Protection Act of 1988 (Public Law 100–503). This notice complies with subsection (e)(12) of the Privacy Act (5 USC 552a), as amended by Public Law 100–503, requiring agencies to publish notice of altered computer matching programs.

DATES: Comments must be received no later than April 19, 1990. Unless comments are received that result in a contrary determination, the matching programs covered by this notice will begin as stated in the paragraph "Dates of the Matching Program" in the "Supplementary Information" section of this notice.

ADDRESSES: Comments may be mailed to the Records Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5010, or delivered to Room 10670 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in Room 10670.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: Subsection (e)(12) of the Privacy Act (5 USC 552a), as amended by The Computer Matching and Privacy Protection Act of 1988 (Public Law 100–503) requires agencies to publish advance notice of new and altered matching programs. OMB Bulletin No. 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," instructs that amendment to an existing matching agreement created under the 1982 OMB Matching Guidelines to bring that agreement into compliance with the provisions of Public Law 100–503 is a matching program change that requires notice. Below are descriptions of such matching programs for which an amended agreement will be negotiated to bring the agreement and the program it covers into compliance with the requirements of Public Law 100–503.

The following date and agency contact information apply to each program.

Dates of the Matching Program: Each matching program is expected to begin in April 1990 and to continue in effect for 18 months unless terminated earlier by either party. Matching activity under each program will begin no sooner than 30 days after the last to occur of the following: (1) Publication of this notice; (2) transmittal of the altered matching agreement to Congress; or (3) report of the matching program to OMB and to Congress.

Address of Agency Official for Receipt of Public Inquiries About Program: Interested parties may submit comments or inquiries to USPS Records Officer, 475 L'Enfant Plaza, Washington, DC 20260–5010.

1. USPS/Department of Defense Federal Salary Offset Match

a. *Participating Agencies.* The United States Postal Service (USPS) and Department of Defense (DOD) (recipient agency).

b. *Purpose of the Matching Program.* To identify postal employees who may owe delinquent debts to the Federal Government as a result of military service or certain programs administered by DOD and to collect those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming.

c. *Legal Authorities Authorizing Operation of the Match.* 39 USC 404 (Postal Reorganization Act) and 5 USC 5514 (Debt Collection Act of 1982).

d. *Categories of Individuals Matched and Identification of Records Used.* USPS employee data records within Privacy Act system USPS 050.020 identified as Finance Records—Payroll

System (54 FR 43667) and DOD records of active duty, retired and reserve military and Defense civilian employees within Privacy Act system S322.10 DLA–LZ identified as Defense Manpower Data Center Data Base (53 FR 4493").

2. USPS/U.S. Department of Housing and Urban Development Federal Salary Offset Match

a. *Participating Agencies.* USPS (recipient agency) and U.S. Department of Housing and Urban Development (HUD).

b. *Purpose of the Matching Program.* To identify postal employees who may owe delinquent debts to the Federal Government under the following programs administered by HUD and to recoup those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming: Title I of the National Housing Act (12 U.S.C. 1703), Section 312 of Housing Act of 1964 (32 U.S.C. 1452(b)), Single Family FHA, and Departmental Claims.

c. *Legal Authorities Authorizing Operation of the Match.* 39 U.S.C. 404 (Postal Reorganization Act) and 5 U.S.C. 5514 (Debt Collection Act of 1982).

d. *Categories of Individuals Matched and Identification of Records Used.* USPS employee data records within Privacy Act system USPS 050.020 identified as Finance Records—Payroll System (54 FR 43667) and HUD debtor files involving the programs specified in paragraph b above within Privacy Act system HUD/Dept-2 identified as Accounting Records (52 FR 22688).

3. USPS/Department of Veterans Affairs

a. *Participating Agencies.* USPS (recipient agency) and Department of Veterans Affairs (VA).

b. *Purpose of the Matching Program.* To identify postal employees who may owe delinquent debts to the Federal Government under certain programs administered by VA and to recoup those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming.

c. *Legal Authorities Authorizing Operation of the Match.* 39 U.S.C. 404 (Postal Reorganization Act) and 5 U.S.C. 5514'(Debt Collection Act of 1982).

d. *Categories of Individuals Matched and Identification of Records Used.* USPS employee data records within Privacy Act system USPS 050.020 identified as Finance Records—Payroll System (54 FR 43667) and VA centralized accounts receivables records which are a part of the following larger VA records systems: 58VA21/22—Compensation, Pension, and Education Records (52 FR 4078 as revised by 54 FR 36933) and 55VA26, Loan Guaranty Home, Condominium, and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records (52 FR 721, as revised by 53 FR 49818).

4. USPS/United States Department of Education

a. *Participating Agencies.* USPS (recipient agency) and U.S. Department of Education (ED).

b. *Purpose of the Matching Program.* To identify postal employees who may owe delinquent debts to the Federal Government under certain programs administered by ED and to recoup those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming.

c. *Legal Authorities Authorizing Operation of the Match.* 39 U.S.C. 404 (Postal Reorganization Act) and 5 U.S.C. 5514 (Debt Collection Act).

d. *Categories of Individuals Matched and Identification of Records Used.* USPS employee data records within Privacy Act systems USPS 050.020 identified as Finance Records—Payroll System (54 FR 43667) and ED records of student assistance loans within Privacy Act systems 18–40–0025 identified as NDSL Student Loan Files; and 18–40–0026 identified as Guaranteed Loan Program—Paid Claims File (both published at 47 FR 27885).

5. USPS/U.S. Small Business Administration

a. *Participating Agencies.* USPS (recipient agency) and U.S. Small Business Administration (SBA).

b. *Purpose of the Matching Program.* To identify postal employees who may owe delinquent debts to the Federal Government under certain programs administered by SBA and to recoup those debts by salary offset under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming.

c. *Legal Authorities Authorizing Operation of the Match.* 39 U.S.C. 404 (Postal Reorganization Act) and 5 U.S.C. 5514 (Debt Collection Act of 1982).

d. *Categories of Individuals Matched and Identification of Records Used.* USPS employee data records within Privacy Act system USPS 050.020 identified as Finance Records—Payroll System (54 FR 43667) and SBA records of past due accounts within Privacy Act system 250 identified as Master Loan Files and Privacy Act system SBA 220 identified as Litigation and Claims Files (52 FR 47477).

6. USPS/U.S. Department of Agriculture

a. *Participating Agencies.* USPS (recipient agency) and U.S. Department of Agriculture (USDA).

b. *Purpose of the Matching Program.* To identify postal employees who may owe delinquent debts to the Federal Government under certain programs administered by USDA and to recoup those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming.

c. *Legal Authorities Authorizing Operation of the Match.* 39 U.S.C. 404 (Postal Reorganization Act) and 5 U.S.C. 5514 (Debt Collection Act of 1982).

d. *Categories of Individuals Matched and Identification of Records Used.* USPS employee data records within Privacy Act system USPS 050.020 identified as Finance Records—Payroll System (54 FR 43667) and USDA records of past due accounts within Privacy Act systems USDA/FmHA–1 identified as Applicant/Borrower or Grantee File (50 FR 25727, as amended at 52 FR 2247, 52 FR 44458 and 53 FR 5205); USDA/FCIC–1 identified as Accounts Receivable (53 FR 4047); USDA/ASCS–28 identified as Claims Data Base (Automated) (51 FR 46697, as amended at 53 FR 2517 and 53 FR 12175); and USDA/OFM–3 identified as Administrative Billings and Collections (54 FR 25883).

7. USPS/U.S. Department of Health and Human Services

a. *Participating Agencies.* USPS (recipient agency) and U.S. Department of Health and Human Services (HHS) (Public Health Service.)

b. *Purpose of the Matching Program.* To identify postal employees who may owe delinquent debts to the Federal Government under certain programs administered by HHS and to recoup those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming.

c. *Legal Authorities Authorizing Operation of the Match.* 39 U.S.C. 404 (Postal Reorganization Act) and 5 U.S.C. 5514 (Debt Collection Act of 1982).

d. *Categories of Individuals Matched and Identification of Records Used.* USPS employee data records within Privacy Act system USPS 050.020 identified as Finance Records—Payroll System (54 FR 43667) and HHS Public Health Service records of past due debtors under programs for student loans, scholarships, traineeships, or grant funds under Titles III, VII, and VIII of the Public Health Service Act records systems. HHS' records are within Privacy Act system 09–15–0045 identified as "Health Resources and

Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA" (53 FR 6874).

8. USPS/U.S. Department of Housing and Urban Development

a. *Participating Agencies.* USPS (recipient agency) and U.S. Department of Housing and Urban Development (HUD).

b. *Purpose of the Matching Program.* To verify continuing eligibility of postal employees receiving assisted housing benefits under HUD's assisted housing programs in the State of Pennsylvania and to identify postal employees who are receiving unwarranted or excessive housing assistance through unreported or underreported family income under HUD's assisted housing programs in the State of Pennsylvania.

c. *Legal Authorities Authorizing Operation of the Match.* 39 U.S.C. 404 (Postal Reorganization Act); Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Public Law 100–628; Section 4(a) of the Inspector General Act of 1978, Public Law 95–452; 5 U.S.C. App. 4(a); Section 165 of the Housing and Community Development Act of 1987, Public Law 100–242; and the National Housing Act, 12 U.S.C. 1701–1750g; the United States Housing Act of 1937, 42 U.S.C. 1437–1437o; and Section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s.

d. *Categories of Individuals Matched and Identification of Records Used.* USPS employee data records within Privacy Act system USPS 050.020 identified as Finance Records—Payroll System (54 FR 43667) and HUD's tenant records from selected Public Housing Authorities in the State of Pennsylvania which contain information on individuals who are participants in the Federal low income and Section 8 housing assistance programs.

9. USPS/U.S. Department of Defense

a. *Participating Agencies.* USPS and U.S. Department of Defense (DOD) (recipient agency).

b. *Purpose of the Matching Program.* The matching program will compare USPS payroll and DOD retired military personnel records to identify postal employees whose USPS salary makes them subject to restrictions on earnings imposed by the Dual Compensation Act (5 U.S.C. 5532). If an identified individual is subject to a pay cap or dual compensation offset from his retired military pay, DOD will refer the records to the appropriate military service finance center for an offset determination.

c. *Legal Authorities Authorizing Operation of the Match.* 39 U.S.C. 404 (Postal Reorganization Act) and Public Law 88–448 (Dual Compensation Act, codified as amended at 5 U.S.C. 5532).

d. *Categories of Individuals Matched and Identification of Records Used.* USPS employee data records within Privacy Act system USPS 050.020 identified as Finance Records—Payroll System (54 FR 43667) and DOD's Defense Manpower Data Center Data Base identified as S322.10 DLA–LZ (53 FR 44937).

10. USPS/U.S. Department of Defense

a. *Participating Agencies.* USPS and U.S. Department of Defense (DOD) (recipient agency).

b. *Purpose of the Matching Program.* USPS payroll and DOD military rosters will be compared to identify USPS employees who are Ready Reservists for the purposes of updating DOD's listings of Ready Reservists and reporting reserve status information under Executive Order 11190 to the USPS and Congress. The USPS will be provided with "hits" (individuals common to both files) to allow it to determine if any identified employee would be critical to the USPS effort in time of national emergency and should not be retained in the Ready Reserve.

c. *Legal Authorities Authorizing Operation of the Match.* 39 U.S.C. 404 (Postal Reorganization Act) and Executive Order 11190 (Providing for the Screening of the Ready Reserve of the Armed Forces).

d. *Categories of Individuals Matched and Identification of Records Used.* USPS employee data records within Privacy Act system USPS 050.020 identified as Finance Records—Payroll System (54 FR 4367) and DOD's Defense Manpower Data Center Data Base identified as S322.10 DLA–LZ (53 FR 44937).

11. USPS/State of Florida Office of Auditor General

a. *Participating Agencies.* USPS (recipient agency) and State of Florida Office of Auditor General (F–OAG).

b. *Purpose of the Matching Program.* To identify postal employees who are receiving benefits to which they are not entitled under public assistance programs (AFDC and food stamp) administered by the State of Florida, to recoup monies for improperly received benefits, adjust or terminate benefits as appropriate, and take appropriate action against those suspected of fraudulently receiving benefits.

c. *Legal Authorities Authorizing Operation of the Match.* 39 U.S.C. 404 (Postal Reorganization Act) and Section 11.50 of Florida Statutes.

d. *Categories of Individuals Matched and Identification of Records Used.* USPS employee data records within Privacy Act system USPS 050.020 identified as Finance Records—Payroll System (54 FR 43667) and State of Florida's file of recipients of benefits under AFDC and Food Stamp programs administered by the State of Florida Department of Health and Rehabilitative Services.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 90–6278 Filed 3–19–90; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27797; File No. SR–CBOE–90–04]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Evaluation of Trading Crowd Performance

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 14, 1990, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE seeks an extension of, and permanent approval for, its pilot program providing for the evaluation of trading crowd performance by the CBOE's Market Performance Committee ("MPC").[1]

[1] The CBOE originally filed the proposal pursuant to section 19(b)(3) of the Act. Subsequently, the CBOE amended the filing on March 1, 1990 to seek approval under section 19(b)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis, the Proposed Rule Change

In January 1987 the Commission approved on a pilot basis a CBOE proposal to establish a program for the evaluation of its trading crowds.[2] Under the program, the MPC evaluates members, individually and collectively as trading crowds, to determine whether members have met performance standards relating to quality of markets, competition among marketmakers, observance of ethical standards, and administrative factors. In making an evaluation the MPC may consider any relevant information, including information provided in trading crowd evaluation questionnaires. If the Committee finds that a market-maker has failed to meet minimum performance standards, one or more of the following actions may be taken: The market-maker's registration or appointment to one or more option classes may be suspended, terminated or restricted, or his appointment to additional option classes may be suspended; option classes may be relocated; and the member may be prohibited from trading at a particular station.

Since implementation of the evaluation program, the Exchange has found the program to be effective in dealing with trading crowds and market-makers who have not fulfilled the performance standards expected of them. In particular, the particular crowd evaluation questionnaire has significantly assisted the staff in identifying problem trading crowds so that the MPC could work with those crowds to raise the crowds' level of performance. The rule has also been effective in assisting the Exchange in meeting its obligations to ensure that public investors, through competition among trading crowd market-makers, receive the best execution of their orders. Accordingly, the CBOE proposes an extension of the pilot program, which expired on February 1, 1990, and permanent approved thereof.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of section 6(b)(5) of the Act, which provides, among other things, that the rules of the Exchange are to be designed to promote just and equitable principles of trade and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

With respect to the Exchange's proposal to extend the pilot program, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.[3] In particular, the Commission finds that extension of the pilot is consistent with section 6(b)(5) of the Act because it helps the Exchange to maintain market quality by providing a means to identify and sanction market-makers and trading crowds which fail to meet performance standards. In addition, the program promotes competition among market-makers, thereby ensuring the effective and efficient execution of investor orders at the best available prices.

The Commission finds good cause for approving extension of the pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register in order to permit uninterrupted the continuation of the pilot program while the Commission decides whether to approve the program on a permanent basis. In addition, because there have been no adverse comments concerning the pilot program and because of the importance of maintaining the quality and efficiency of the CBOE's options markets, the Commission believes good cause exists to approve the extension of the pilot program.

With regard to the Exchange's proposal for permanent approval of the pilot, within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days after the date of this publication].

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[4] that the portion of the proposed rule change (SR-CBOE-90-04) relating to an extension of the pilot is approved until such time as

[2] *See* Securities Exchange Act Release No. 24008 (January 16, 1987), 52 FR 3072 (January 30, 1987) (Order approving File No. SR-CBOE-85-44).

[3] 15 U.S.C. 78f(6)(5) (1982).

[4] 15 U.S.C. 78s(b) (1982).

the Commission acts on the proposal to approve the pilot on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 13, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6307 Filed 3-19-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues and Application To Withdraw Unlisted Trading Privileges in Over-the-Counter Issues

February 27, 1990.

On February 15, 1990, the Midwest Stock Exchange, Inc. ("MSE") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-5764	CTUS	Cetus Corporation. $.01 Par Value.
7-5765	LDMFB	Laidlaw Transportation Ltd. No Par Value.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following issues:

File No.	Symbol	Issuer
7-5766	TRA	Stratus Computer Inc. $.01 Par Value.
7-5767	LINB	LIN Broadcasting Corp. $2.00 Par Value.

In the case of Stratus Computer, Inc., a replacement issue is being requested due to its recent listing on the New York Stock Exchange.[1] In the case of LIN Broadcasting Corp., a replacement issue is being requested due to the acquisition of the Company by McCaw Cellular Communications, Inc.

Comments

Interested persons are invited to submit on or before March 29, 1990, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grants of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in OTC securities, the Commission must consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6249 Filed 3-19-90; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities listed on a national securities exchange are not eligible for OTC/UTP.

[Rel. No. 34-27800; File No. SAR-NASD-90-12]

Self-Regulatory Organizations; Notice and Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Informational Linkage With the Stock Exchange of Singapore, Limited

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 7, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of The Proposed Rule Change

The NASD has filed, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, for Commission authorization to extend for 60 days the operation of its Pilot Program with the Stock Exchange of Singapore, Limited ("SES"). The Pilot Program consists of an interchange of closing price and volume data on 27 NASDAQ securities that are also traded through the SES's facilities. With the thirteen hour time difference (twelve hours during EDT), the trading hours of the SES and NASD markets do not overlap. Hence, the end-of-day information being exchanged under the Pilot Program mainly assists the establishment of opening prices the following business day. The Pilot Program currently involves no automated order routing or execution capabilities, and no such capability will be provided during the proposed extension.

The Commission previously authorized operation of the NASD-SES Pilot Program for a two-year term that expires on March 14, 1990.[1] Commission approval of the instant filing, would permit continuation of this Pilot Program through May 14, 1990. During this interval, the NASD will assemble certain additional information requested by the Commission staff that will be incorporated into another Rule 19b-4 filing dealing with this Pilot Program.

II. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD-SES Pilot Program commenced operation with the Commission's approval of File No. SR-NASD-87-40 on March 14, 1988. The principal features of this Program were fully described in section 1 of that Form 19b-4, which description is hereby incorporated by reference.[2]

The interim authorization of the NASD-SES Pilot Program will expire on March 14, 1990. Therefore, the NASD, on its own as well as the SES's behalf, requests that the Commission approve a brief extension of the present Pilot Program for 60 days. This period will be used to gather additional statistical information and to formalize a longer term plan respecting the future operation of the Pilot Program. These

[1] *See* Release No. 34-25457 (March 14, 1988), 53 FR 9156 (March 21, 1988).

[2] *See also* Release No. 34-25065 (October 28, 1987), 52 FR 42167 (November 3, 1987).

matters will be addressed in a subsequent Rule 19b–4 filing.

During the proposed extension, the Pilot Program will continue operating in its present form. Specifically, each market will transmit to the other static price/volume information compiled at the end of each trading day on selected NASDAQ securities.[3] The SES will transmit the closing inside quotation and cumulative reported volume (collectively referred to as "SES information") respecting each Pilot security quoted on the SES. Similarly, the NASD will transmit for each Pilot security the closing inside quotes, cumulative volume, last sale price (for NASDAQ/NMS issues only) and the closing quote of every NASDAQ market maker in each of the 27 Pilot securities (collectively referred to as "NASD information"). Because the SES now employs an order-driven system rather than a system of competing market makers, SES information received under the Pilot Program no longer includes the closing quotes of individual market makers in Pilot securities.[4] Although some SES members continue to function as market makers, they are not obliged to maintain continuous, two-sided quotes in any of the NASDAQ securities designated as Pilot securities. Hence, the closing inside quotes received from the SES in these securities (which might entirely represent the open limit orders of public investors) may be somewhat wider than the corresponding inside quotes calculated from the bids/offers NASDAQ market makers that are transmitted to the SES.

The exchange of static, end-of-day information will remain the principal function of the Pilot Program for the duration of the proposed extension. Nonetheless, subject to mutual agreement of the NASD and the SES, the number of Pilot securities may be increased to 35, the number originally authorized by the Commission in 1988. SES information will continue to be provided only to subscribers of NASDAQ Level 2/3 services. Similarly, NASD information transmitted to Singapore will be available only on the terminals used by SES members to access the exchange's order driven trading system. Finally, the original agreement between the NASD and the SES will remain in effect for the term of the extended Pilot Program. This agreement, which provides for the sharing of regulatory information as needed, is believed adequate given the nature and limited scope of the ongoing Pilot Program.[5]

Regarding the statutory basis for the extended Pilot Program, the NASD relies on sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17 A (a)(1) (C) and (D) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *" Finally, section 17A(a)(1) reflects the Congressional goals of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD submits that extension of the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for advancement of these goals in the context of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The extended Pilot Program will permit the continued exchange of static market data on a limited group of NASDAQ securities between the NASD and the SES on a non-exclusive basis. The costs of supporting the Pilot Program are nominal, and the sponsoring markets absorb their respective costs. The market information being exchanged by the NASD and SES under the Pilot Program is deemed to constitute an exchange of equivalent value. Hence, no additional fee is paid by SES and NASD member firms for receipt of the static data being provided on Pilot securities.

The NASD submits that neither the structure nor operation of the present Pilot Program poses any burden on competition. The brief extension being sought will enable the sponsoring markets to formalize the future objectives and structure of the Pilot Program. These matters will be addressed in a subsequent Rule 19b–4 filing that will provide a further opportunity for public comment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD did not solicit or receive comments on File No. SR–NASD–90–12.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Association requests that the Commission find good cause pursuant to section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**. As indicated above, the NASD's request for approval of this rule change regards only a temporary, short-term extension of a previously approved Pilot Program, pending the NASD's submission of a new plan for future operation of the Program.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1) (B) and (C), 15A(b)(6), 17A(a)(1) (C) and (D) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The Commission believes that accelerated approval is appropriate to avoid termination of the Pilot Program pending formalization of the sponsors' plans for the future operation of this Program. The brief extension being approved should allow sufficient time for the NASD to prepare another Rule 19b–4 filing regarding this program, which filing will incorporate certain statistical information germane to the Commission's deliberations on this matter. Further, the Commission notes the limited nature of the Pilot Program and that no substantive changes will be implemented during the proposed extension. Accordingly, the Commission believes that the Pilot Program should

[3] When the Pilot Program commenced operation, 35 NASDAQ securities were selected for inclusion. These securities were listed in Exhibit 2 to File No. SR-NASD-87-40. Over time, 8 securities were deleted for reasons unrelated to the Pilot Program, *e.g.*, mergers and listing on a national securities exchange. At this point, end-of-day information continues to be exchanged on the remaining 27 NASDAQ securities.

[4] This modification in the SES's market structure was not contemplated when the NASD submitted File No. SR-NASD-87-40.

[5] The NASD notes that any substantive enhancement to the Pilot Program, including introduction of an automated order routing and/or execution system, would require concurrent authorizations from the Commission and the Monetary Authority of Singapore. No such enhancement will be implemented during the requested extension.

not be terminated under these circumstances.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 10, 1990.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, That the proposed rule change be, and hereby is, approved for a period of sixty days, commencing on March 15, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 13, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6250 Filed 3-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27796; File Nos. SR-NYSE-90-7 and SR-NYSE-90-8]

Self-Regulatory Organizations; Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to the Adoption of Listing Standards and Amendments to NYSE Rules To Permit the Listing of Index Warrants on the NYSE Composite Index and the Nikkei Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 16, 1990 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the propsed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE has submitted to the Commission two proposals to amend its rules to establish a regulatory framework that permits the listing of index warrants generally as well as index warrants specifically based on the NYSE Composite Index ("NYA Index Warrants") [1] and the Nikkei Stock Average ("Nikkei Index Warrants").[2] Specifically, the NYSE proposes to amend the NYSE Listed Company Manual ("Manual") to provide listing standards applicable to Index Warrants; to amend NYSE Rule 405 to apply the options suitability standards in Rule 723 to recommendations regarding Index Warrants; to amend Rule 408 to require that discretionary orders in Index Warrants be approved and initialled on the day entered by a Senior Registered Options Principal or a Registered Options Principal; and to approve for listing and trading NYA and Nikkei Index Warrants. The test of the proposed rule changes may be examined at the placess specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statments.

[1] The NYSE proposal to permit the trading of warrants based on the NYA Index was submitted to the Commission as File No. SR-NYSE-90-7. The NYA Index is an internationally recognized index covering the price movement of all common stocks listed on the NYSE.

[2] The NYSE proposal to permit the trading of warrants based on the Nikkei Index was submitted to the Commission as File No. SR-NYSE-90-8. The Nikkei Index is an internationally recognized, price-weighted index comprised of 225 actively-traded stocks on the Tokyo Stock Exchange. The Nikkei Index is calculated and managed by Nihon Keizai Shimbun, Inc. of Japan.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

(i) Listing Standards

The Exchange is proposing to (1) amend the Manual with new paragraphs 703.16 and 703.17 in order to provide listing standards for Index Warrants and (2) trade Index Warrants based on the Nikkei and NYA Indexes. The proposed Index Warrants will be unsecured obligations of an issuer, subject to cash settlement in United States dollars during a term of at least one year from date of issuance.

Index Warrants would be eligible for listing whether exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the Index Warrant expiration date (if not exercisable prior to such date), the holder of an Index Warrant structured as a "put" would receive payment in United States dollars to the extent that the index has declined below a pre-stated cash settlement value. Conversely, holders of an Index Warrant structured as a "call" would, upon exercise or at expiration, receive payment in United States dollars to the extent that the index has increased above the pre-stated cash settlement value If "out-of-the-money" at the time of expiration, the Index Warrants would expire worthless.

Since the Index Warrants would represent unsecured obligations of the issuer, only Index Warrants issued by companies that exceed the Exchange's financial listing criteria and that have assets in excess of $100 million would be considered eligible for listing. The Exchange proposes to require a minimum public distribution of 1,100,000 Index Warrants together with a minimum of 400 public holders, and an aggregate market value of $4,000,000. Additionally, the Exchange proposes that the listing of Index Warrants for other than corporate issuers would be considered on a case by case basis.

(ii) Suitability Standards

The Exchange is proposing to amend Rule 405 (Diligence as to Accounts) in order to apply the options suitability standard in Rule 723 to recommendations regarding Index Warrants. Specifically, the Exchange proposes to recommend that Index Warrants be sold only to options-approved accounts. However, whether or not the customer's account has been

approved for options trading, the options suitability standard in Rule 723 will be applicable to recommended transactions involving Index Warrants. This suitability standard would require that the member or member organization have reasonable grounds to believe the transaction is suitable for the customer, and have a reasonable basis for believing that the customer could evaluate and financially bear the risks of the recommended transaction.

(iii) Discretionary Accounts

Index Warrant transactions in discretionary accounts would also be subject to an additional requirement similar to procedures under Rule 724 regarding options transactions in discretionary accounts. Proposed Supplementary Material .10 to Rule 408 (Discretionary Power in Customer's Accounts) would require a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in Index Warrants on the day entered.

(iv) Risk Disclosure

The Exchange proposes to distribute circulars to its members regarding the trading on NYA and Nikkei Index Warrants. Specifically, the Exchange believes that investors should be afforded an explanation of the special characteristics and risks attendant to trading Index Warrants based on the NYA Index and the Nikkei Index. The proposed circulars would note that Index Warrants have several unique characteristics and can be expected to fluctuate in value due to a number of interrelated factors, including but not limited to, variations in the applicable index for the warrant. The circulars also would enumerate the suitability standard for investors of Index Warrants discussed above. In addition, the Exchange proposes to distribute an Information Memo to its membership advising of the amendments to the NYSE Rules 405 and 408 relating to Index Warrants.

(v) Listing Index Warrants

The Exchange represents that the proposed NYA and Nikkei Index Warrants issues will conform to the proposed listing standards which generally provide that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed size and earnings requirements in Paragraph 102.01 of the Manual; (2) the Index Warrants shall have a term of at least one year from date of issuance; and (3) the minimum public distribution of such issues shall be 1,100,000 Index Warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

Currently, in connection with its proposal to trade Nikkei Index Warrants, the NYSE is undertaking to establish an appropriate means of surveillance sharing with respect to the Nikkei Stock Average component stocks.

(2) *Statutory Basis*

The Exchange believes that the proposed rules changes are consistent with section 6(b)(5) of the Act in that they are, among other things, designed to promote just and equitable principles of trade, to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange. Furthermore, the proposed rules amendments are consistent with section 11A(a)(1)(C)(ii) of the Act in that they will tend to assure fair competition among exchange markets and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule changes will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule changes, or

(b) institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 10, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Dated: March 13, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6246 Filed 3-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 3427799; File No. SR-PSE-90-02]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Formal Seat Market Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations.[1]

[3] 17 CFR 200.30-3(a)(12) (1989).

[1] On March 1, 1990, the Exchange submitted to the Commission an amendment to the proposal, *see* letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Howard L. Kramer, Division of Market Regulation, Commission, dated February 23, 1990. The amendment made minor language changes to the seat market procedures.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to establish a policy and procedure to regulate bids and offers in the membership seat sale market of the PSE. The proposed Seat Market Procedures, which in large part formalize existing procedures, are as follows:

Pacific Stock Exchange Incorporated

Seat Market Procedures

Seat Market Hours: 6:30 a.m.–3 p.m. (Pacific Time).

Seat Market Location: Member Services Department.

Seat Market Quotation: (414) 393–5937.

Deposits: All first time buyers must submit a deposit at the time a bid is entered in an amount no less than 20% of their bid. The deposit must be in the form of a cashier's or certified check or a check from a member firm that owns one or more seats.

Notification: If the best bid or offer changes, the party with the previous best bid or offer will be informed of the change. That party has the opportunity to change his bid or offer. If that occurs, the new bidder or offerer will be notified. Once a firm bid or offer is established, the party on the other side will be notified. If there are no further changes or if a sale is negotiated, the trading floors will be notified of the current market quote. The seat market telephone recording will be updated. All notifications will be made by the member services staff on a "best efforts" basis.

Verbal Authorizations: All first time buyers must submit initial bids or changes to their bid in writing. Current seat owners may negotiate a sale or purchase, enter a bid or offer, or authorize a change in an existing bid or offer over the phone, with written confirmation to be received no later than the opening the following business day. Facsimile copies of changes are accepted and the original must be mailed to the Exchange immediately after the facsimile is transmitted. All verbal changes will be noted on a form by Exchange staff, who will time stamp the form at the time the change is made.

Opening: If two or more parties are waiting at the opening to participate in the market, they will determine among themselves who is first. Correspondence received in the mail will be time stamped and prioritized by time or receipt.

Depth of the Market: Staff may inform parties with the best bid or offer of the depth of the market within 15% of their price. Parties entering bids or offers where there are others at the same price will be told how many are ahead at that price. The identity of parties in the market will not be disclosed.

Disputes: Failure to follow through on a verbal authorization that results in a negotiated sale by the opening the following day or failure to pay the balance due on a negotiated seat purchase can result in a forfeiture of the bidder's deposit in the amount of the difference between the first negotiated price and the seller's final sale price, if it is less. Any dispute or failure to pay a member may result in arbitration proceedings. A subcommittee of the Membership Committee shall be established, which shall consist of the Chairman, Vice-Chairman, and staff who will meet when necessary to solve disputes in the seat market.

Unusual Activity: In the event of unusual activity or an announcement of major news that may impact the market, the Member Services staffs will contact the Chairman and Vice-Chairman of the Membership Committee, the General Counsel for the Exchange, and the Executive Committee, if necessary. They shall have the authority to interpret these procedures in the best interests of all parties.

Suspension of Procedures: The Executive Committee or the Board of Governors of the Exchange shall at all times have the authority to suspend trading and procedures governing regulation of the seat market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), and (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE determined that it was necessary to establish a written policy and procedure to regulate the seat sale market. The new policy, in large part, formalizes procedures that have been followed by the PSE for years. New areas covered by the proposed policy are: (a) Verbal authorizations by members to enter bids, offers, or changes, (b) information disclosure concerning the depth of the market to seat market participants, and (c) procedures for unusual activiy which impacts the seat market.

Verbal authorizations by existing seat holders entering bids, offers, or changes are permitted under the new policy. Such verbal authorization must be confirmed in writing within 24 hours. This new policy is designed to give all members, for example, those out of state, the same time advantage. All seat owners will be asked to identify themselves in a convincing manner when verbally authorizing market activity.

The Exchange developed a new policy for disclosure of the depth of the market within 15 percent in order to provide seat market participants with more information about existing offers and bids, when entering their own bids, offers, and changes. This is intended to aid participants in making their trading decisions.

The PSE also developed a new policy for unusual activity. This policy provides that in the event of unusual activity in the seat market, the Chairman and Vice Chairman of the Membership Committee, the General Counsel, and the Executive Committee will have authority to interpret the Seat Market Procedures in the best interest of all parties.

The Seat Market Procedures were developed over a period of time by the Membership Committee and PSE staff. The Board of Governors also was involved during the draft stages of the policy. The Membership Committee is composed of four options members, one of whom is a Governor; three equity members, two of whom are Governors; and two allied members, one of whom is a Governor. The GSE believes the policy is fair and orderly and provides for the prompt dissemination of market information.

The proposed policy is consistent with section 6(b)(5) of the Act in that it removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest.

B. Self-Regulatory Organizations's Statement of Burden on Competition

PSE does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the proposed Rule Change Received from Members, Participants, or Others

The Seat Market Procedures policy was developed by the Membership Committee and PSE staff, with input from the Board of Governors during the draft stages.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-90-02 and should be submitted by April 10, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegation authority.

Dated: March 13, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6247 Filed 3-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17378; 811-5811]

AAL U.S. Government Zero Coupon Trust, Series 1 and Subsequent Series; Application for Deregistration

March 13, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: AAL U.S. Government Zero Coupon Trust, Series 1 and Subsequent Series ("Applicant").

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATES: The application on Form N-8F was filed on January 22, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 12, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 222 West College Avenue, Appleton, Wisconsin 54919-0007.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, at (202) 272-3009, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a unit investment trust organized under the laws of the state of Missouri. On May 15, 1989, Applicant filed a Notification of Registration pursuant to section 8(a) of the 1940 Act on Form N-8A. On that same date, Applicant filed a registration statement on Form S-6 (File No. 33-28681). The registration statement never became effective. Applicant has never made a public offering of its securities.

2. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6248 Filed 3-19-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Lapsa, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 90-3-26, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find LAPSA, Inc., fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 28, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, (202) 366-1064.

Dated: March 13, 1990.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-6239 Filed 3-19-90; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 14, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0902.
Form Number: 8288 and 8288-A.
Type of Review: Extension.
Title: U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests; Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.
Description: Form 8288 is used by the withholding agent to report and transmit the withholding to IRS. Form 8288-A is used to validate the withholding and to return a copy to the transferee for his/her use in filing a tax return.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 38,000.
Estimated Burden Hours Per Response/ Recordkeeping:

	Form 8288	Form 8288-A
Recordkeeping.	5 hrs., 30 mins....	2 hrs., 52 mins.
Learning about the law or the form.	4 hrs., 28 mins....	12 mins.
Preparing and sending the form to IRS.	4 hrs., 46 mins....	15 mins.

Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 217,440 hours.
OMB Number: 1545-1060.
Form Number: 8288-B
Type of Review: Revision.
Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.
Description: Form 8288-B is used to apply for a withholding certificate from IRS to reduce or eliminate the withholding required by section 1445.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 3,300.
Estimated Burden Hours Per Response/ Recordkeeping: Recordkeeping, 2 hours, 4 minutes; learning about the law or the form, 1 hour, 49 minutes; preparing the form, 50 minutes; copying, assembling, and sending the form to IRS, 20 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 16,698 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-6255 Filed 3-19-90; 8:45 am]

BILLING CODE 4830-01-M

Customs Service

[T.D. 90-21]

Tuna Fish; Tariff-Rate Quota

In the matter of the tariff-rate quota for the Calendar Year 1990 on tuna classifiable under item 1604.14.20, Harmonized Tariff Schedule of the United States (HTSUS).

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for Calendar Year 1990.

SUMMARY: Each year the tariff-rate quota for tuna fish described in item 1604.14.20, HTSUS, is based on the United States canned tuna production for the preceding calender year.

EFFECTIVE DATES: The 1990 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Karen L. Cooper, Chief, Quota Branch, Regulatory Trade Programs Division, Office of Trade Operations, Office of Commercial Operations, U.S. Customs Service, Washington. DC 20229, (202/ 566-8592).

It has now been determined that 39, 534,360 kilograms of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 1990, at the rate of 6 percent ad valorem under item 1604.14.20 HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under item 1604.14.30 HTSUS.

(QUO-1-CO:T:R:Q:)

Dated: March 15, 1990.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 90-6332 Filed 3-19-90; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held March 21, 1990 in room 600, 301 4th Street, SW., Washington, DC from 9 a.m. to 11:30 a.m.

The Commission will meet with Mr. Victor Olason, Director, Office of European Affairs, Mr. Csaba Chikes, Deputy Area Director for Eastern Europe and the Soviet Union, Dr. Victor Li, President, East West Center, Mr. Stephen Murphy, Director, Television and Film Service, Mr. Sigmund Cohen, Policy Officer, Television and Film Service and Dr. William Glade, Associate Director, Bureau of Educational and Cultural Affairs.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: March 13, 1990.

Ledra L. Dildy,

Management Analyst, Federal Register Liaison.

[FR Doc. 90-6292 Filed 3-19-90; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 54
Tuesday, March 20, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the April 3, 1990 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Friday, April 20, 1990, starting at 10:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Charles R. Row, Acting Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: March 16, 1990.

Charles R. Row,

Acting Secretary Farm Credit Administration Board.

[FR Doc. 90–6435 Filed 3–16–90; 12:34 pm]

BILLING CODE 6705–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 Noon, Monday, March 26, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–6478 Filed 3–16–90; 3:50 pm]

BILLING CODE 6210–01–M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, April 4, 1990.

PLACE: Board Hearing Room 8th floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of March 1990.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of notice: March 13, 1990.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 90–6396 Filed 3–16–90; 10:17 am]

BILLING CODE 7550–01–M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of March 19, 26, April 2, and 9, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland

STATUS: Open and Closed

MATTERS TO BE CONSIDERED:

Week of March 19

Tuesday, March 20

10:00 a.m.—Briefing on Recommended Action for Substandard Parts (Public Meeting)

Thursday, March 22

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting)

a. Fitness for Duty Rule Stay Request Filed by Several Diablo Canyon Employees (postponed from March 15)

Week of March 26 (Tentative)

Thursday, March 29

10:00 a.m.—Periodic Briefing on Progress of Resolution of Generic Safety Issues (Public Meeting)

11:00 a.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 30

10:00 a.m.—Periodic Briefing on Status of Activities with the Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting)

Week of April 2 (Tentative)

Tuesday, April 3

8:30 a.m.—Collegial Discussion of Items of Commissioner Interest (Public Meeting)

2:00 p.m.—Briefing on Economic Incentive Regulation of Nuclear Power Plants (Public Meeting)

Friday, April 6

11:30 a.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 9 (Tentative)

Friday, April 13

10:00 a.m.—Briefing on Risk Based Technical Specifications Program (Public Meeting)

11:30 a.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: March 15, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–6460 Filed 3–16–90; 2:16 pm]

BILLING CODE 7590–01–M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1427)

TIME AND DATE: 10 a.m. (CST), March 22, 1990.

PLACE: Ramada Inn Coliseum, Ramada Rooms 1 and 2, I–55 North and Pearl Street, Jackson, Mississippi.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on February 22, 1990.

ACTION ITEMS:

New Business

A—Budget and Financing

A1. Retention of New Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury in March 1990, Pursuant to Section 26 of the TVA Act.

B—Purchase Awards

B1. Award of Purchase Contract to JTM Industries, Inc., for Fly Ash Removal at Allen Fossil Plant (Proposal QH–88957B).

B2. Award for Purchase Contract to Hamon Cooling Towers for Cooling Tower Repairs at Paradise Fossil Plant (Negotiation GN–79091A).

B3. Award of Purchase Contract to Control Systems Company for Replacement Fuel Ignition Systems for Shawnee Fossil Plant (Negotiation GA–89875A).

E—Real Property Transactions

E1. Abandonment of a Transmission Line Easement Affecting Approximately 1.4 Acres of Land in Limestone Country, Alabama.

E2. Deed Modification Affecting Approximately 0.05 Acre of Watts Bar Reservoir Land in Roane County, Tennessee.

E3. Grant of Term Easement Affecting Approximately 1.6 Acres of Land in Maury County, Tennessee.

F—Unclassified

F1. Resolution Approving the Filing of Condemnation Cases.

F2. Personal Services Contract No. TV–86022V with Harza Engineering Company.

F3. Personal Services Contract No. TV–86021V with Gilbert/Commonwealth, Inc.

F4. Personal Services Contract No. TV–86023W with Chas. T. Main, Inc.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: March 15, 1990.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 90–6458 Filed 3–16–90; 2:04 pm]

BILLING CODE 8120–01–M

Corrections

Federal Register
Vol. 55, No. 54
Tuesday, March 20, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 87P-0033]

Medical Devices; Clarification of FDA's Policy on Labeling of Surgical Sutures; Exemption From the Prescription Labeling Requirements

Correction

In rule document 90-4720 beginning on page 7491 in the issue of Friday, March 2, 1990, make the following correction:

On page 7492, in the first column, the signing official's title should read "*Associate Commissioner for Regulatory Affairs*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Monongahela National Forest

Correction

In notice document 90-3921 beginning on page 6057 in the issue of Wednesday, February 21, 1990, make the following correction:

On page 6057, in the second column, under **SUMMARY**, in the eighth line, "16.248" should read "16,248".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-76]

Absecon Pharmacy; Revocation of Registration

Correction

In notice document 90-5389 beginning on page 9029 in the issue of Friday, March 9, 1990, make the following correction:

On page 9031, in the first column, in the first complete paragraph, in the fourth line from the bottom, "invoked" should read "revoked".

BILLING CODE 1505-01-D

federal register

Tuesday
March 20, 1990

Part II

Department of Defense

Department of the Army

32 CFR Part 516
Litigation; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 516

Litigation

AGENCY: Department of the Army, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Army announces a total revision of 32 CFR part 516, to bring it in line with changes promulgated in Army Regulation 27-40, Litigation. This regulation prescribes policy and procedures for the representation of the Department of the Army and its personnel in civilian court proceedings; litigation under the Federal Claims Collection Act, 31 U.S.C. 71 (as amended by the Debt Collection Act of 1982), the Federal Medical Care Recovery Act, 42 U.S.C. 2651-53, and other authorities; prosecution of offenses committed on military installations; and the release of information and appearance of witnesses in criminal and civil court actions.

EFFECTIVE DATE: April 19, 1990.

FOR FURTHER INFORMATION CONTACT: LTC John P. Galligan, Headquarters, Department of the Army, Litigation Division, Room 2C438, Pentagon, Washington, DC 20310, (202) 697-3462.

SUPPLEMENTARY INFORMATION: This revision also implements Department of Defense Directive 5405.2 regarding release of official information in litigation and testimony by Department of Defense personnel. This revision also establishes a single centralized organization within the Army to coordinate and monitor criminal, civil, contractual, and administrative remedies stemming from corruption and procurement fraud; sets forth policies and procedures in the coordination of remedies, and reporting of procurement fraud and corruption related to Army contracts; and establishes the requirement for developing training materials and providing instruction relating to fraud and corruption in the procurement process. This revision implements Department of Defense Directive 5500.19 by prescribing procedures for cooperation with the Office of Special Counsel (OSC) Merit Systems Protection Board (MSPB). This revision also implements Department of Defense Directive 5505.5 and Department of Defense Directive 5525.8. It establishes policy and procedures for the redress of fraud in DOD programs and for individuals to request that the United States indemnify them in cases of personal liability arising from their official duties. It also establishes policy concerning soldiers on active duty who are summoned to serve on state and local juries.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Kenneth L. Denton,

Alternate Army Liaison Officer with the Federal Register.

Accordingly, 32 CFR part 516 is revised to read as follows:

PART 516—LITIGATION

Sec.

Authority: 10 U.S.C. 218, 1037, 1552, 1553, 2306; 18 U.S.C. 3401; 18 U.S.C. 515, 513, 543; 31 U.S.C. 3729 and 41 U.S.C. 51 and 60R4.

Subpart A—General

§ 516.1 Purpose.

(a) This regulation prescribes policies and procedures applicable to:

(1) Civil and criminal proceedings in civilian courts.

(2) Litigation of claims in favor of the United States, including those for damage, loss, or destruction of Army property, and for medical care expenses.

(3) Proceedings of interest to the Army before Federal or State administrative bodies such as utility rate commissions, the Federal Trade Commission, and similar agencies.

(b) Except as expressly provided in subpart E, it does not include:

(1) Claims based in whole or in part on conduct in violation of the antitrust laws.

(2) Compromise of claims arising from an exception made by the General Accounting Office (GAO) in the account of an accountable officer.

(3) Claims referred to another agency for processing which have not been returned (except Army claims referred for litigation).

(4) Maritime claims under AR 27–20.

(5) Tax claims arising under the revenue laws and regulations of the United States.

(c) It does not apply to:

(1) Courts-martial or administrative proceedings conducted by or on behalf of the Department of the Army (DA) or any subordinate element thereof except as provided in subpart H.

(2) Congressional hearings.

§ 516.2 References.

Publications and prescribed and referenced forms are listed in Appendix A.

§ 516.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in Appendix M.

§ 516.4 Responsibilities.

(a) The Judge Advocate General (TJAG). Subject to the control of litigation vested in the U.S. Attorney General and to the general oversight of the Army General Counsel, TJAG will:

(1) Initiate, administer, supervise, and coordinate litigation which arises out of DA operations, or which otherwise involve its interests.

(2) Act for the Secretary of the Army on matters concerning litigation.

(3) Other than that undertaken directly by the Army General Counsel, conduct liaison between DA and the Department of Justice (DOJ).

(i) Within DA, except as otherwise specified herein, only TJAG, and attorneys designated by TJAG, are authorized to represent DA and its instrumentalities before courts, administrative tribunals, and regulatory bodies, and to maintain liaison with DOJ and other governmental departments and agencies regarding litigation. In this regard, TJAG may assign or detail judge advocates, pursuant to 10 U.S.C. 806(d), to the Department of Justice to represent the United States in civil or criminal cases of interest to the Department of Defense.

(ii) Within the Office of The Judge Advocate General (OTJAG), the Chief, Litigation Division has primary responsibility for this function.

(b) Attorneys assigned to Army activities or commands. When specifically authorized by this regulation or requested by the Chief, Litigation Division, OTJAG, the staff judge advocate (SJA), judge advocate (JA), or legal adviser of an Army activity or command, or attorneys assigned to that activity or command, will represent DA and Army personnel in litigation. In such cases, attorneys appointed Special Assistant U.S. Attorneys under section 543, United States Code, title 28 (28 U.S.C. 543) may, with the consent and under the supervision of the U.S. Attorney, appear in court and represent the interests of the United States.

(c) Commander, U.S. Army Claims Service (USARCS). The Commander, USARCS and attorneys assigned thereto are authorized, subject to AR 27–20, chapter 4, to maintain direct liaison with DOJ in regard to the preliminary aspects of administrative settlement of claims in excess of $25,000 under the Federal Tort Claims Act.

(d) Chief, Contract Law Division, OTJAG. The Chief, Contract Law Division, OTJAG; attorneys assigned to that division; and other attorneys designated on a case-by-case basis by the Chief, Contract Law Division, are authorized to represent DA and its instrumentalities in negotiation, administrative proceedings, and litigation involving taxation, and liaison with DOJ and other Federal, State, or local governmental authorities concerning such matters.

(e) Legal representatives of the Chief of Engineers. These officials may maintain direct liaison with DOJ in litigation arising from the civil works and real property of functions of the U.S. Army Corps of Engineers.

(f) Chief Trial Attorney, Contract Appeals Division, U.S. Army Legal Services Agency (USALSA). The Chief Trial Attorney; attorneys assigned to the Contract Appeals Division, USALSA; and attorneys otherwise designated by the Chief Trial Attorney will protect the interests of the Government before the Armed Services Board of Contract Appeals (ASBCA), and maintain direct liaison with DOJ concerning appeals from decisions of the ASBCA. The Chief Trial Attorney will present to the ASBCA all DA cases, except that U.S.

Army Corps of Engineers attorneys will act as trial attorneys in connection with U.S. Army Corps of Engineers contract cases. The Federal Acquisition Regulation System contains regulatory material relating to responsibilities with respect to contract appeals to the ASBCA.

(g) Chief, Regulatory Law Office, USALSA. The Chief, Regulatory Law Office, USALSA; attorneys assigned to that office; and other attorneys designated on a case-by-case basis by the Chief, Regulatory Law Office, will represent DA on all regulatory matters before the courts, administrative agencies and regulatory bodies, including but not limited to:

(1) Communications.

(2) Transportation.

(3) Other utility services.

(4) All regulatory matters before administrative agencies and regulatory bodies relating to environmental controls.

(h) Chief, Patents, Copyrights, and Trademarks Division, USALSA. The chief and the attorneys assigned to that Division are designated to represent DA on matters pertaining to patents, copyrights, or trademarks.

(i) Chief, Labor and Civilian Personnel Law Office, OTJAG. The chief, attorneys assigned to that Office, and attorneys identified as Labor Counselors by the chief are designated to represent DA in matters pertaining to labor relations, civilian personnel, and Federal labor standards enforcement before the Federal Relations Authority, the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, and the workman's compensation commissions of the various States.

(j) Chief, Procurement Fraud Division, USALSA. The Chief, Procurement Fraud Division; attorneys assigned to that division; and other attorneys designated by the Chief, Procurement Fraud Division will represent DA in all procurement fraud and corruption matters before the Army suspension and debarment authority and before any civil fraud recovery administrative body and will maintain liaison and coordinate remedies with DOJ and other agencies in matters of procurement fraud and corruption. The Federal Acquisition Regulatory System contains regulatory material relating to responsibilities with regard to suspension and debarment.

§ 516.5 Restriction on contact with DOJ.

Except as authorized by this regulation, no military or civilian personnel of the Army will confer or correspond with any representative of DOJ concerning legal proceedings within the purview of this regulation without the prior approval of TJAG. This paragraph, however, in no way affects the requirement for JAs and legal advisers to maintain liaison with U.S. Attorneys. Also, it does not affect any requirement arising from the Memorandum of Understanding between the Departments of Justice and Defense relating to the investigation and prosecution of certain crimes (AR27–10, paragraph 2–7) or requiring cooperation with DOJ and its agencies during the course of investigations.

§ 516.6 Appearance as counsel.

(a) In addition to restrictions on the practice of law contained in other regulations, military personnel on active duty and DA civilian personnel are prohibited from appearing as counsel before any civilian court in litigation in which the United States has an interest, without the prior written approval of TJAG unless one of the following conditions exists:

(1) The appearance is specifically authorized herein.

(2) The individual is a party to the action or proceeding.

(3) The appearance is authorized under an Expanded Legal Assistance Program (AR 27–3).

(b) All requests for appearance as counsel will be made to HQDA (DAJA–PT). (See Appendix B.)

(c) Requests for DA military or civilian attorneys to appear in any civilian court, on behalf of a military person who is also pending trial by court-martial, will be delivered to the SJA or legal adviser, or the appropriate Regional Defense Counsel if the requested attorney is assigned to the U.S. Army Trial Defense Service (USATDS). The SJA or legal adviser will then forward the request to HQDA (DAJA–PT), with his or her recommendation and evaluation of the case. The Regional Defense Counsel will similarly forward the request within USATDS channels. The recommendation and evaluation should include, but is not limited to, the nature and current status of court-martial proceedings; a list of all counsel participating in the defense; and the nature and status of any previous civilian court actions in the case or related cases. A requested attorney not assigned to USATDS may forward directly to the Chief, USATDS (Appendix B), an analysis of the case including venue, nature of relief requested, facts and legal authorities, and reasons for requesting authority to appear in a civilian court. The contents of this communication will be privileged. SJAs will not request disclosure of its contents. The Chief, USATDS, after considering this information, will make a recommendation to TJAG.

§ 516.7 Service of process.

(a) *Criminal process.* (1) The delivery of persons charged with criminal offenses, at the request of or pursuant to process issued by civil authorities, will be accomplished in accordance with AR 600–40.

(2) Commanders and other Army officials will adhere to the policies prescribed in paragraph (b) of this section, in the treatment of process issued for the attendance of witnesses or the production of evidence in criminal cases.

(b) *Civil process.* (1) It is DA policy to assist civil officials in the service of process as provided in paragraphs (b) (3) and (4) of this section.

(2) Commanders and other Army officials will not prevent or evade the service or process in legal actions brought against the United States or themselves concerning their official duties. If acceptance of service of process would interfere with the performance of his or her military duties, a commander or other official may designate a representative to accept service.

(3) Service of civil process within the United States, its territories, and possessions is as follows:

(i) Process of Federal courts. Service of process is accomplished under the rules of the Federal court concerned. Installation commanders may impose reasonable restrictions upon persons who enter their installations to serve process.

(ii) Process of State courts. In areas of exclusive Federal jurisdiction not subject to the right to serve process, the commander or supervisor will determine whether the individual requested to be served wishes to accept service voluntarily under the laws of the State issuing the process. A JA or other DA attorney will inform the individual of the legal effect of voluntary acceptance of service. If the individual does not desire to accept service, the party requesting such service will be notified and will be informed that the nature of the jurisdiction precludes service by State authorities on the military installation. In areas of exclusive Federal jurisdiction in which the right to serve process is reserved by, or granted to, the State, and in areas of concurrent jurisdiction or in which the United States has only a proprietary interest, Army officials asked to facilitate service of process will initially proceed as provided above

for areas not subject to the right to serve process. If the individual declines to accept service, the requesting party will be so notified and will then be informed that he or she may proceed through authorities authorized to serve process by the applicable State law. Civil officials authorized by applicable State law will be permitted, upon proper application, to enter areas subject to the right to serve process for the purpose of levy on and subsequent sale of personal property of personnel residing thereon, subject to reasonable limitations. This authority does not extend, however, to levy on or sale of personal property of military or civilian personnel essential to or proper for the performance of their official duties.

(iii) Process of foreign courts. In the absence of a treaty or agreement to the contrary, individuals or agencies requesting the assistance of military authorities in serving process of foreign courts will be advised to proceed as prescribed in 28 U.S.C. 1696.

(4) Service of civil process outside the United States, its territories, and possessions is as follows:

(i) Process of foreign courts. In foreign countries the service of process issued by foreign courts, including subpoenas duces tecum, will be made under the law of the place of service except as otherwise provided by applicable treaties or agreements between the host country and the United States. In foreign areas under exclusive U.S. jurisdiction, service of process issued by foreign courts will be made under the law specified by appropriate U.S. authority in such areas (for example, organic acts, territorial codes, or executive orders).

(ii) Process of Federal courts. Service of process on U.S. citizens or residents is accomplished pursuant to 28 U.S.C. 1781 and 1783, and the rules of the Federal court concerned. See especially Federal Rules of Civil Procedure 4, 5, and 45, U.S.C. Appendix. Installation commanders may impose reasonable restrictions upon persons who enter their installations to serve process.

(iii) Process of State courts. Army personnel requested to serve process will follow the procedures prescribed in paragraph (b)(3) of this section. If the individual will not accept service voluntarily, the party requesting service will be so notified and advised to follow the procedures prescribed or recognized by the law of the foreign country concerned.

(iv) Suits against agencies or instrumentalities of the United States. Any writ, summons, notice of legal proceedings, or other foreign civil process served upon or otherwise delivered to an Army officer, employee, or activity will be referred immediately to the appropriate JA or legal adviser. He or she will return the document to the issuing authority with a statement explaining the lack of authority of the person or activity to accept service on behalf of the United States, and suggesting that service or delivery be made upon the United States through established diplomatic channels.

§ 516.8 Mailing addresses.

Mailing addresses for activities of OTJAG and its field operating agencies referenced in this regulation are in Appendix B.

Subpart B—Reporting Legal Proceedings

§ 516.9 General.

(a) Reports control exemption. The reports required herein are exempt from reports control under AR 335–15, paragraphs 3–3a(5) and 5–2e(4).

(b) Command and agency responsibility. The heads of Army Staff agencies; commanders of installations, activities, and units; and commanders or officials in charge of other Army agencies will take the necessary actions to ensure the expeditious submission of the reports required by this section.

(c) Mailing address for reports. Except as provided in paragraphs (c)(1) through (5) of this section, all reports will be addressed to HQDA (DAJA–LT).

(1) Correspondence reporting pending or prospective litigation or infringement claims involving patents, copyrights, or trademarks wil be addressed to HQDA (JALS–PC).

(2) Reports of pending or prospective litigation involving problems of taxation will be addressed to HQDA (DAJA–KL).

(3) Reports involving communications, transportation, utility services, and environmental administrative proceedings will be addressed to HQDA (JALS–RL).

(4) Reports involving labor relations, civilian personnel, or equal employment opportunity litigation will be addressed to HQDA (DAJA–LTC).

(5) Reports involving possible civil recovery in cases of procurement fraud and corruption will be addressed to HQDA (DAJA–PF).

(d) Safeguarded information. Reports required by this regulation are prepared for use in lawsuits and will be submitted in an unclassified form when possible. Reports which contain defense information within the meaning of AR 380–5 will be reviewed by the declassification authority with a view to downgrading or declassifying such material whenever such action is consistent with the interests of the United States. If downgrading or declassification is not feasible, the classified material should be separated from the report and forwarded under separate cover. Safeguarded nondefense information will be marked "For Official Use Only" when a positive determination is made that the material requires such protection. Documents marked by the office of origin will be forwarded without change in marking.

§ 516.10 Other reporting requirements.

The reports required herein do not affect the requirements.

(a) For notifying the Federal Bureau of Investigation (FBI) of offenses pursuant to AR 27–10.

(b) For submitting serious incident pursuant to AR 190–40.

(c) For reporting fraud, criminal conduct, or other irregularities affecting Army procurement pursuant to Defense Federal Acquisition Regulation Supplement (DFARS), 48 CFR 209.472.

(d) For reporting the exercise of criminal jurisdiction by foreign tribunals over U.S. personnel pursuant to AR 27–50.

(e) For reporting required by other regulations.

§ 516.11 Referral to and action by SJA or legal adviser upon commencement of legal proceedings.

(a) *Referral to SJA or legal adviser.* (1) All process and pleadings served on any personnel, command, or agency of DA or its instrumentalities, together with other immediately available data concerning the commencement of legal proceedings, will be referred promptly to the organization's SJA or legal adviser, as appropriate, for action. If no legal officer is available in the command or agency, the process and pleadings will be forwarded for action to the next higher headquarters or, if tenant or attached, to the host/supporting organization.

(2) Legal proceedings requiring this action include:

(i) Suits against the United States involving or arising out of operations of DA.

(ii) Suits against DA military or civilian personnel or any official or employee of an instrumentality of the United States which involves an Army activity (or his or her personal representative, if the action is against his or her estate) arising out of the performance of official duties.

(iii) Actions arising out of DA contracts, subcontracts, or purchase orders wherein the Government may be required to reimburse the contractor for recoveries, fees, or costs of litigation and legal process affecting DA

operations or which purport to require official action by DA military personnel or civilian employees.

(3) DA military or civilian personnel, or any official or employee of an instrumentality of the United States which involves an Army activity (or his or her personal representative, if the action is brought against his or her estate) against whom a domestic civil or criminal action or proceeding is brought will, if the action or proceeding arises out of the performance of official duty:

(i) Immediately inform his or her commander or supervisor upon receipt of any information regarding the commencement of such action or proceeding.

(ii) Promptly deliver all process and pleadings served upon him or her, or an attested true copy thereof, to his or her commander or supervisor. The commander or supervisor will promptly inform the SJA or legal adviser, and deliver to him or her all process and pleadings received. The SJA or legal adviser will then proceed under paragraph (e)(2) of this section.

(b) *Liaison with U.S. Attorneys.* SJAs are responsible for establishing and maintaining liaison with the U.S. Attorney in each district within their geographical areas.

(c) *Notification of local U.S. Attorney.* If the legal proceeding is instituted in the United States, the SJA or legal adviser will promptly establish liaison with the U.S. Attorney for the district where the proceeding has been brought. If necessary, he or she will furnish the U.S. Attorney with copies of all process and pleadings. Since interim proceedings often occur before service is completed, the SJA or legal adviser should ensure that the U.S. Attorneys advise him or her of service in suits involving DA or its personnel, particularly if a return is due or a motion for relief is pending. Unless instructed to the contrary by HQDA, the SJA or legal adviser will furnish the U.S. Attorney with such assistance as he or she may request. He or she will monitor the progress of the litigation and any other litigation involving DA within his or her area, and prepare and forward investigative reports per § 516.12.

(d) *Advisory report.* If the subject matter of the legal proceedings involves possible congressional, Secretarial, or Army Staff interest, or requires the immediate attention of HQDA (for example, a habeas corpus proceeding, a motion for a temporary restraining order or preliminary injunction, or any other judicial or administrative proceeding which has a return of less than 60 days) or immediate action by DOJ, the SJA or legal adviser will promptly telephone a report to HQDA. (See § 516.9(c)). For legal proceedings instituted in the United States requiring immediate action by DOJ, an additional information copy will be sent to the appropriate U.S. Attorney. For legal proceedings instituted in foreign tribunals, subject to paragraph (h) of this section, additional information copies will be sent to the major overseas commander concerned, and the appropriate U.S. Embassy or Legation. (See Appendix C.) The report will state, to the extent readily available, the following:

(1) Title and style of the action or proceeding.

(2) Full names and addresses of the parties.

(3) Tribunal in which the action or proceeding is filed, date filed and docket number, when and on whom service of process was made, and date by which pleading or response is required.

(4) Nature of the action or proceeding, amount claimed or other relief sought (in actions or proceedings overseas, the amount in foreign currency, and the converted amount in dollars).

(5) Whether the defendant is an officer, agent, or contractor of DA, or an instrumentality of the United States (nonappropriated fund (NAF) activity) or an official or employee thereof.

(6) The reasons for immediate action. For example, the legal proceedings may involve:

(i) An attempt to obtain injunctive relief against DA military personnel or civilian officials acting in their official capacities.

(ii) An attempt to obtain injunctive relief against a DA contractor where such relief would affect a contractor's right to use Government property in performance of a Government contract.

(iii) An attempt to obtain injunctive relief in connection with the award of a DA contract or with the right to continue performance of such a contract.

(iv) Criminal charges that have been brought against military personnel or civilian employees as to matters relating to their official duties, particularly in the instances where physical restraint has been imposed.

(v) A request or recommendation for the employment of a local attorney at Government expense.

(vi) Hiring of a local attorney on a contingent basis § 516.15(b)(2).

(e) *Transmission of copies of process, pleadings, and related papers.* (1) In the cases described in paragraph (a)(2) of this section, except as provided in paragraphs (e)(1) (i) and (ii) and (e)(2) of this section, the SJA or legal adviser will promptly transmit to HQDA (see § 516.9(c)) one copy of all process, pleadings, and related papers, with a brief description of the actions taken. Copies will be furnished superior headquarters concerned. These transmittals will not be made to report:

(i) Bankruptcy, receivership, or other insolvency proceedings. (See AR 37–103, ch. 16.)

(ii) Pending or prospective litigation or claims involving patent, copyright, or trademark matters. HQDA(JALS–PC) will be notified under AR 27–60; Federal Acquisition Regulation (FAR), 48 CFR subpart 27.70; and AR 25–30 paragraph 2–43.

(iii) Actions of any of the following types against DA contractors:

(A) Tort actions of a routine nature, such as motor vehicle accidents, and other tort actions which are not especially related to the work being performed under the contract or the manner of performance of such work.

(B) Workmen's compensation claims.

(C) Actions based on the Army contractor's contractual relations with third parties, when such actions are of a routine commercial nature. (Warranty actions in which payment or reimbursement is sought from the Army contractor on a contractual basis for death, personal, injury, or property damage do not come within this exception.)

(D) Actions based on employer-employee relationships, where no violation of a Federal law, regulation, executive order, or Government contract provision is alleged.

(2) If the proceeding is a civil or criminal action in a domestic court against DA military or civilian personnel, or an official or employee of an instrumentality of the United States which involves an Army activity (or his or her personal representative, if the action is against his or her estate) (see paragraph (a)(3) of this section):

(i) The SJA or legal adviser will:

(A) Immediately notify the appropriate branch of HQDA(DAJA–LT) by telephone or electrical means (Appendix B).

(B) Promptly transmit to the U.S. Attorney concerned a copy of all process and pleadings together with a statement that a recommendation with regard to certification of scope of employment will be furnished either directly by HQDA(DAJA–LT) or through DOJ.

(C) Inquire into the issue of scope of office or employment, obtaining, if feasible, a statement from the defendant and his or her immediate commander or supervisor. If the defendant or other witness is not available in the immediate area of the investigation,

information as to his or her whereabouts should be furnished.

(D) Transmit by expedited mail or courier service two copies of all process and pleadings and a statement of his or her conclusion as to scope of employment under the applicable law together with two copies of all evidence and relevant citations accumulated in support thereof of HQDA(DAJA–LT). Transmit one copy of all process, pleadings, opinions, evidence, and citations to HQDA(JACS–GC). No additional justification for the use of expedited mail or courier service should be required.

(E) In the case of a domestic civil action brought against DA military or civilian personnel for damage to property, or for personal injury or death, on account of that person's operation of a motor vehicle (Government- or privately-owned) in the scope of his or her office or employment (28 U.S.C. 2679), or on account of that person's performance of medical, dental, or related health care functions in the scope of his or her office or employment as a physician, dentist, nurse, pharmacist, paramedical, or other supporting medical personnel (10 U.S.C. 1089), promptly transmit to the U.S. Attorney concerned, after direct coordination with HQDA(DAJA–LT), copies of all process and pleadings in the matter together with the original, signed scope of employment statement (see 28 CFR 15.3(q)).

(ii) The Chief, Litigation Division, will review all of the evidence and opinions regarding the issue of scope of employment and, as appropriate, will:

(A) Determine the DA position with regard to scope of employment and coordinate that position with DOJ.

(B) Determine the status of any administrative settlement actions of the USARCS.

(C) Notify the defendant of the DA position.

(f) *Related requirements.* In addition to the actions required by paragraph (e)(2)(i) of this section, the following activities have specific actions required by the cited directives:

(1) Habeas corpus proceedings involving Army personnel. (See Appendix C.)

(2) Litigation or prospective litigation involving taxation of interest to the Army affecting:

(i) Contractors or their transactions (FAR, 48 CFR part 29 and DFARS, 48 CFR part 229).

(ii) Lessee's interest in a Wherry Housing project (AR 210–47).

(iii) Army and Air Force Exchange Service (AAFES) activities (AR 60–20).

(iv) Purchase or sale of alcoholic beverages (AR 215–2).

(v) NAF and related activities (AR 215–1).

(vi) Open messes and other military sundry associations and funds (AR 215–1).

(3) Tort and contract claims, insurance and litigation involving NAF activities (AR 215–1).

(4) Litigation or prospective litigation concerning annexation of Army lands (AR 405–25).

(g) Communications, transportation, or utility service proceedings and environmental administrative proceedings. Any contracting officer or other official of the Army responsible for the acquisition of communications, transportation, or utility services who becomes aware of any action or proceeding in the United States, its territories, or possessions, which may be of interest to the Army, will promptly refer the matter together with pertinent data to the SJA or legal adviser who will take the actions prescribed in paragraphs (d) and (e) of this section. Examples of actions or proceedings requiring referral are new or amended rates, rules, or regulations; applications for authority to discontinue or initiate service; and changes in radio wave patterns causing adverse interference. Administrative proceedings involving environmental matters of interest to the Army will be similarly referred. In addition, the SJA or legal adviser will transmit the following to HQDA(JALS–RL):

(1) The names and addresses of any parties intervening and the substance of their positions.

(2) Names of Government users affected by any change.

(3) Copy of any proposed rates, rules, or regulations.

(4) His or her recommendation as to whether the Army should intervene in the action or proceeding. If intervention is recommended, a memorandum will be provided to support the recommendation.

(h) Legal proceedings overseas. Foreign communications, transportation, and utility services proceedings need not be reported. In other legal proceedings instituted in a foreign country, the SJA or legal advisor will take the actions prescribed in d and e above.

§ 516.12 Investigative reports.

(a) *Requirement.* In the cases described in § 516.11(a), unless otherwise provided in regulations or directed by HQDA, the SJA or legal adviser to whom legal process or pleadings have been referred will prepare an investigative report concerning the proceeding and supplemental reports and submissions as requested by HQDA. This report will be provided at the earliest practicable date, except that it will not be prepared in the following cases:

(1) Bankruptcy, receivership, and other insolvency proceedings. (See AR 37–103, chap 16.)

(2) Patent, copyright, or trademark matters. (See § 516.11(e)(i)(ii).)

(3) Habeas corpus cases. (See Appendix C.)

(4) Communications, transportation, or utility services administrative proceedings and environmental administrative proceedings. (See § 516.11g).

(5) Tax problems affecting contractors or their transactions. (See FAR, 48 CFR part 29 and DFARS, 48 CFR part 229.)

(6) Claims for pay and allowances of members and former members of the uniformed services. (The Commanding General, U.S. Army Finance and Accounting Center will furnish requisite data and prepare the investigative report as requested by HQDA(DAJA–LT).)

(7) Shipping and maritime claims within the purview of AR 27–20 which have been investigated and processed under AR 55–19 or other applicable regulations. (USARCS will compile requisite data and prepare the investigative report as to such claims as directed by TJAG.)

(8) Actions against contractors where the amount of the claim in litigation is fully covered by insurance under the rating plans or under workmen's compensation coverage prescribed in the FAR.

(9) If the action is against Army contractors or subcontractors whose contracts might require reimbursement by the Government for any judgment and expense of litigation arising out of the contracts, HQDA(DAJA–LT) should be advised whether the contractor desires the action to be defended by a U.S. Attorney. If so:

(i) Attach an agreement for representation, executed by the contractor or a representative qualified to act for him or her. (See Appendix D.)

(ii) If there is a substantial issue as to the liability of the Government to reimburse the contractor, provide a statement of facts affecting liability.

(10) The SJA or legal adviser will inform HQDA(DAJA–LT), by telephone or by electrical transmission, and will transmit by expedited mail any relevant material not previously forwarded when he or she is unable to prepare or complete an investigative report:

(i) Because the incident from which the suit arises occurred in an area outside the responsibility of his or her command or agency.

(ii) Because the incident has been or is being investigated by another command or agency.

(iii) For other good reason.

(b) *Content.* A tabbed and indexed investigative report will be prepared as follows:

(1) Part I, statement of facts. Include a complete statement of the facts upon which the action and any defense thereto are predicted. In each instance in which a fact or facts can be supported by documents or statements of witnesses (see paragraph (b)(5) of this section) appropriate parenthetical references will be inserted into the statement of facts. Include details of any previous administrative action, such as the filing of an administrative claim. If the action is predicted on the Federal Tort Claims Act, include as applicable a description of the plaintiff's relationship to the United States, its instrumentalities, or its contractors. Also include a statement whether an insurance company or other third party has an interest in the plaintiff's claim by subrogation or otherwise. If so, state the amount and circumstances.

(2) Part II, setoff or counterclaim. Include a statement whether any setoff or counterclaim exists and, if so, a complete statement of the facts, cross-referenced to supporting exhibits or statements of witnesses.

(3) Part III, responses to pleading. Include a statement whether each allegation of fact in the complaint or similar pleading, treating them in the order set forth therein, is well-founded and, if not, reference to the exhibit or statement of witness refuting the allegations. A draft answer should be prepared.

(4) Part IV, memorandum of law. Include a brief statement of the applicable law with citations to legal authority and such argument and comments upon the facts of the case as is necessary to show the applicability of the authorities cited. The discussion of local law, where applicable, should cover such issues as the measure of damages, scope of employment, effect of contributory negligence, and limitations upon death and survival actions.

(5) Part V, exhibits and witness list.

(i) Exhibits will include:

(A) All pertinent documentary evidence.

(B) Copies of the process and pleadings if not previously transmitted.

(3) Copies of any pertinent contracts, subcontracts, collateral agreements, or assignments, or extracts therefrom, which may affect the action.

(ii) Include a list of all possible witnesses for the Government with:

(A) Present or last known home and office addresses.

(B) Home and Office telephone numbers.

(C) Social security account numbers.

(iii) Include a signed (and if possible, sworn) statement from each witness reflecting his or her knowledge of the facts upon which he or she may testify. If a witness is unavailable or unwilling to furnish a statement, a summary of the testimony he or she might be expected to give, if known, should be substituted for his or her statement. Transmission of the investigative report should not be delayed because a witness is not available. His or her statement should be forwarded as soon as practicable.

(c) *Additional requirements.* The SJA or legal adviser will ensure that all DA records related to administrative or legal proceedings are preserved and that disposition is not made without approval of the SJA or legal adviser. Copies of reports of claims officers, reports of investigating officers, and boards of officers, and similar data, will be used to avoid duplication of effort. Any such report, however, will not be submitted in place of the investigative report. One copy of DA records which it is anticipated will be used as evidence will be accompanied by DA Form 4 (Department of the Army Certification for Authentication of Records) with the custodian's certificate completed. The list of exhibits will also include notation of the reason for safeguarding each item of marked nondefense information (AR 340–17) and classification of any material being forwarded under separate cover (§ 516.9 (d)). Care should be exercised in selecting and compiling the appendixes and exhibits which are attached to the investigative report. Ordinarily, unless otherwise instructed or requested by HQDA (DAJA–LT), each exhibit submitted should be tabbed and internally paginated. All references to the exhibits in the body of the investigative report should be to page numbers of particular exhibits. In-house memorandums should be separated from official correspondence and forwarded as two exhibits, each paginated. In preparing exhibits and attachments, including local regulations where required, care should be exercised in executing the DA Form 4. While the items to be certified must be generally identified, all documents need not be mentioned specifically. In addition, only the upper portion of the form should be executed; neither ribbons nor seals should be affixed; the authenticating lines will be inserted by HQDA (DAJA–LT).

(d) *Distribution of investigative reports.* Investigative reports will be forwarded to HQDA (DAJA–LT). The use of expedited mail or courier service is authorized to transmit litigation reports and other documents and items needed to support litigation. A copy of reports involving contractual matters in litigation will be furnished the head of the contracting activity concerned. Unless otherwise directed by HQDA (DAJA–LT), copies of investigative reports will be distributed as follows:

(1) In the U.S. District Courts involving torts. One copy to the U.S. Attorney concerned; two copies to HQDA (DAJA–LTT).

(2) In the U.S. District Courts involving contracts. One copy to the U.S. Attorney concerned; two copies to HQDA (DAJA–LTG).

(3) In cases appealing decisions of the Merit Systems Protection Board MSPB to the U.S. Court of Appeals for the Federal Circuit. Three copies to HQDA (DAJA–LTC).

(4) Other cases. Four copies to HQDA (DAJA–LT).

§ 516.13 Litigation involving the Army and Air Force Exchange Service

In addition to the requirements in § 516.9 through § 516.12, when actions are initiated in a Federal, State, or foreign tribunal against AAFES, a copy of all documents should be forwarded to the General Counsel, AAFES, P.O. Box 660202, Dallas TX 75266–0202.

Subpart C—Defense of Legal Proceedings

§ 516.14 Defense by DOJ and U.S. Attorneys.

(a) *Responsibilities.* DOJ is responsible for the defense of suits brought against the United States, its agencies and instrumentalities, and officials and employees whose official conduct is involved, in all U.S. and foreign courts (28 CFR part 0). Under the direction of the Attorney General, U.S. Attorneys normally afford counsel and representation to the defendants in such suits. In addition, U.S. Attorneys will defend civil actions or proceedings brought against military personnel or civilian employees arising from either of the following:

(1) Their operation of motor vehicles in the scope of office or employment (18 CFR part 15).

(2) Their performance of medical, dental, or related health care functions while acting within the scope of their offices or employment as physicians, dentists, nurses, pharmacists, or

paramedical or other supporting medical personnel.

(b) *Policies.* It is DOJ policy to afford counsel and representation to present and former DA military personnel and civilian employees and its agencies and instrumentalities who are sued civilly or charged with violation of local or State criminal laws as a result of the performance of their official duties. This policy applies wherever property damage, personal injury, or death has resulted or where a substantial Federal interest is involved. In addition, representation may be furnished private interests in suits in which the Government ultimately may be required to make reimbursement. Otherwise, except where unusual circumstances exist, representation will be declined. Representation may also be declined where there is adequate personal liability insurance and potential U.S. liability appears not to be involved.

§ 516.15 Procedures for obtaining representation.

(a) *DOJ and U.S. Attorneys.* As to any action or proceeding in which Government representation may be afforded under § 516.14, the SJA or legal adviser will:

(1) If the action or proceeding is a civil suit brought against a military person or a civilian official or employee arising out of his or her operation of a motor vehicle in the scope of his or her office or employment or arising out of that person's performance of medical, dental, or related health care or health research functions in the scope of his or her office as a physician, dentist, nurse, pharmacist, paramedical, or other supporting medical personnel, obtain representation by taking the actions specified in § 516.11(e)(2)(i)(E).

(2) In cases where time for response is limited, request the appropriate U.S. Attorney to afford temporary counsel and representation. (HQDA (DAJA–LT) will be advised promptly of the request for representation and of the action being taken.)

(3) Promptly forward a request for representation, signed by the defendant, to HQDA (DAJA–LT), with an affidavit or declaration pursuant to 28 U.S.C. 1746 from the defendant's supervisor. The request and affidavit or declaration will attest to the fact that the defendant was acting within the scope of his or her employment at the time of the occurrence which gave rise to the lawsuit. (See figures C–1 and C–2 of this section).

(b) *Private counsel at Government expense.* (1) Except as provided in paragraph (b)(3) of this section, requests for the employment of private counsel at Government expense will be referred through channels to HQDA (DAJA–LT). Each request will be accompanied by a statement of facts justifying the request and the recommendations of commanders or superviors concerned. Persons who employ private counsel in such cases should be advised that they may be responsible for any expenses thus incurred if they do so without notice from HQDA (DAJA–LT) that authorization has been obtained.

(2) In actions or proceedings brought in foreign countries, if immediate representation is required beyond feasible handling by the SJA or legal adviser concerned and the local court or agency has denied a request for a stay or continuance to permit action on a formal request for the hiring of a local attorney, local counsel may be retained. Such local counsel should be selected from a listing of qualified and suitable foreign counsel maintained at the U.S. Embassy or Consulate in the country or city in which the action or proceeding has been initiated. The retention of such counsel will specifically be made contingent on confirmation by DOJ and should be limited to the local equivalent of a special appearance on the jurisdictional point or the procuring of a stay of the proceedings, provided such actions would not constitute a general appearance. The local attorney retained under this emergency authorization should avoid any steps which could be construed as a waiver of the sovereign immunity of the United States, its agencies and instrumentalities, and officials or employees whose official conduct is involved. If the case falls within its responsibility, DOJ will employ the attorney for the services performed in the event the attorney is not retained generally.

(3) Counsel may be hired to represent persons subject to the Uniform Code of Military Justice (UCMJ) before foreign courts and administrative agencies (10 U.S.C. 1037). Requests for the employment of such counsel will be processed under AR 27–50.

(c) *Government contractors.* Unless requested to do so by the Army, DOJ normally will not defend suits against contractors whose contracts with the United States provide for reimbursement to the contractor for judgments arising out of any suits in connection with the performance of the contract, or attorney fees and costs of such litigation.

(1) HQDA (DAJA–LT) will decide which cases will be sent to DOJ with a request that the contractor be represented by a U.S. Attorney. Such representation will not be requested in cases where no investigative report or pleadings are required to be furnished to HQDA (DAJA–LT). Where a contractor requests representation by a U.S. Attorney and DOJ has agreed to the request, the contracting agency will obtain from the contractor an executed agreement for representation (figure C–3 of this section and forward it to HQDA (DAJA–LT).

(2) Upon receipt of advice that the U.S. Attorney will act on behalf of the contractor, or that the services of the U.S. Attorney are not available, the contracting officer or purchasing office will so inform the contractor.

(3) The following relationships and responsibilities in the conduct of any ensuing litigation are furnished for guidance:

(i) Unless the contractor requests and is authorized representation by a U.S. Attorney, it is presumed that the contractor will obtain services of private counsel reasonably necessary to defend appropriate contractor interests.

(ii) Where the contractor is represented by a U.S. Attorney, there is no objection to the participation of private counsel employed by the contractor, provided it is understood that the U.S. Attorney has complete control of the litigation. Fees for the services of private counsel in such cases will not be reimbursable except under unusual circumstances and then only if approved by HQDA (DAJA–LT). Approval by HQDA (DAJA–LT) of the contractor's request for authorization to employ private counsel does not shift from the contracting officer the primary obligation to determine aspects of reimbursement under the contract. This includes not only the payment of any adverse judgment but also the reasonableness of the fees of private counsel.

(iii) DOJ does not charge the contractor or DA for any expenses incident to services performed by a U.S. Attorney.

(iv) The compromise of a suit is primarily for determination by the contractor unless the contract specifies otherwise. Aspects of reimbursement under the contract are primarily for determination by the contracting officer, with the advice of his or her SJA or legal adviser.

(v) Private counsel representing the contractor may seek advice from the Army with respect to any aspect of the litigation. The contracting officer should consult with his or her SJA or legal adviser concerning the appropriate course of action.

(vi) Whether and to what extent fees for private counsel may be reimbursed are matters primarily for determination by the contracting officer, with the advice of his or her SJA or legal adviser.

Figure C–1 to § 516.15—Sample of a Scope of Employment Statement

Declaration

I, Captain John Smith, am the Commander, Company A, Fort Olive, New Jersey, and I have read the allegations filed in the case of Plaintiff v. Department of the Army and Private Jones, which is now pending in the U.S. District Court for the District of New Jersey.

At the time relevant to this case, Private John Jones was the subordinate of the Commander, Company A, Fort Olive and his actions relevant to this case were performed in his official capacity and in good faith.

All of Private Jones' actions complained of were performed within the scope of his official duties as Assistant Charge of Quarters, Company A, Fort Olive, New Jersey.

I declare under penalty of perjury that the foregoing is true and correct.

1 October 1989.

John Smith,

Captain, Infantry.

Figure C–2 to § 516.15—Format for a Request for Representation

Request for Representation

I, . . . (name, title, and agency) . . . , hereby request the Attorney General of the United States, or his agent, to designate counsel to defend me, both in my official and individual capacities, in the case of . . . (name of case) . . ., which is now pending in the following Court: . . . (name of court) . . . . In support of this request, I now declare, under penalty of perjury, that I have read the allegations in the complaint filed in this case, that all actions taken by me in this matter were performed in my official capacity, were all within the scope of my official duties, and were performed in my reasonable, good faith belief that my actions were in conformity with the law. I am not aware of any relevant criminal investigation or proceeding now pending.

I understand that if my request for representation is approved by the Department of Justice, I will be represented by a United States Attorney or his assistant; that any final adverse money judgment rendered against me personally cannot be paid by the U.S. or any of its agencies, including the Department of the Army; and that I am entitled to retain private counsel at my own expense. I further understand that the Army expresses no opinion as to the advisability of retaining private counsel.

(Date)

(Signature)

Figure C–3 to § 516.15—Format for an Agreement for Representation

(Date)

The undersigned hereby requests the Attorney General of the United States, or his agent, to designate counsel to defend on behalf of the undersigned the action entitled . . . (case title) . . . in the . . . (court) . . . .

It is agreed that the assumption by the Attorney General of the defense of said action does not alter or increase the obligations of the United States under United States Contract No. . . . (contract number) . . . .

It is further agreed that such representation will not be construed as a waiver of or estoppel as to the assertion of any rights which any interested party may have under said contract.

(Contractor)

By: (Signature of authorized official and Title)

Subpart D—Initiation of Legal Proceedings (Other Than Affirmative Claims)

§ 516.16 General.

DOJ is responsible for the initiation of litigation on behalf of the United States in appropriate cases which have been properly referred to that department for action (28 CFR part O). Procedures governing referral of certain classes of cases to DOJ are covered in subpart E. Procedures governing employment of counsel at Government expense in foreign litigation initiated by DA personnel are in AR 27–50.

§ 516.17 Referral to TJAG.

(a) Civil cases not required to be referred to CAO for settlement, which cannot be resolved without the initiation of litigation by the Unites States, and in which the procedure for referral to DOJ is not otherwise provided by regulation or written authorization by the Chief, Litigation Division, will be forwarded through channels to HQDA(DAJA–T).

(b) Except as otherwise provided in subpart E, referrals under paragraph (a) of this section will be made in triplicate and will include a:

(1) Statement of facts. A complete statement of facts upon which the recommendation for initiation of litigation is predicated. Include the details of any prior administrative action.

(2) Memorandum of law. A statement of applicable law with citations to legal authority and such discussion and comment upon the facts of the case as is necessary to show the applicability of the authorities cited. If the case involves the violation of a statute, a citation of such statute will be included. Consideration should also be given to the jurisdiction of the tribunal in which the action or proceeding should be brought, questions of timeliness, jurisdictional amount, and jurisdiction to grant the type of relief sought. A discussion of local law should be included if applicable.

(3) Exhibits and witness lists.

(i) Exhibits will include:

(A) All pertinent documentary evidence.

(B) Copies of any pertinent contracts, subcontracts, collateral agreements, or assignments, or extracts therefrom, which may affect the action.

(ii) A list of all possible witnesses for the Government will include:

(A) Present or last known addresses.

(B) home and office telephone numbers.

(C) A signed statement from each witness reflecting his or her knowledge of the facts upon which he or she may testify. If a witness is unavailable or unwilling to furnish a statement, a summary of the testimony he or she might be expected to give, if known, should be substituted for his or her statement. Transmission of the report should not be delayed because a witness is not available. His or her statement should be forwarded as soon as practicable.

(iii) Copies of reports of claims officers, reports of investigating officers and boards of officers, and similar data, will be used where available to avoid duplication of effort. One copy of DA records which it is anticipated will be used as evidence will be accompanied by a DA Form with the custodian's certificate completed. The list of exhibits will also include notation of the reason for safeguarding each item of marked nondefense information and classification of any material being forwarded under separate cover.

(c) On rare occasions it may be to the Government's advantage to authorize a Government contractor, whose contract provides for the reimbursement of necessary legal expenses, to employ private counsel to initiate legal proceedings against a third party. Authorization to employ private counsel in such instances must be obtained from TJAG under § 516.15.

§ 516.18 Proceedings to repossess Government real property or quarters or to collect delinquent rent.

(a) As an exception to the usual practice of DOJ, U.S. Attorneys are authorized to accept, without prior approval from the Attorney General, written requests from authorized field agents of other departments and agencies to:

(1) Recover possession of real property from tenants, squatters, trespassers, and others.

(2) Enjoin trespasses on Federal property.

(3) Collect delinquent rentals or damages for use and occupancy of not more than $200,000.

(b) Installation commanders are hereby authorized, through their SJA or legal adviser and without the prior approval of TJAG, to request the initiation of such legal proceedings by

the U.S. Attorney for the district in which the real property is located, under the following procedures:

(1) When eviction or an action to collect a delinquent rent claim is necessary, the authorized officer will communicate directly with the U.S. Attorney. Each request is sent by a separate letter. A copy will be sent to the Chief, General Litigation Section, Land and Natural Resources Division, Department of Justice, WASH DC 20530, and to HQDA(DAJA–LTG).

(2) A copy of each subsequent letter between the authorized officer and the U.S. Attorney, which may relate to one case only, is sent to DOJ and HQDA as noted above. When the debtor is not in possession, the U.S. Attorney may not demand payment or write any collection letters on any claims for less than $25. If the U.S. Attorney does, the Army must furnish a statement showing that the debtor is employed or that his or her financial status warrants such action.

(3) Action to recover money may not be instituted unless the Army furnishes satisfactory proof that a judgement is collectible.

(4) Legal action by DOJ may consist of one of the following:

(i) Eviction for violation of the terms and conditions of occupancy.

(ii) Eviction together with collection of delinquent rental or other charges.

(iii) Collection of delinquent rents or other charges. In paragraphs (b)(4) (i) and (ii) of this section, requests are made to the U.S. Attorney for the judicial district in which the real property is located. In this paragraph where the tenant is not in possession, the request for collection is sent to the U.S. Attorney for the judicial district in which the tenant resides.

(5) Once an account involving eviction has been turned over to the U.S. Attorney, a commander must not accept part or full payment of the delinquent rent. Neither should any rent be accepted for occupancy after the delinquency period. For rent delinquency of tenants whose accounts have been turned over to the U.S. Attorney, payments thereafter will normally be sent to the U.S. Attorney. However, if a tenant's payments are sent directly to the installation housing officer, they will be forwarded to the U.S. Attorney.

(6) Authorized officers may approve payment of court costs to the local Federal courts. They may also approve other incidental costs related to rent collections and evictions chargeable to the Family Housing Management Account. (See AR 210–50, chap 2.)

(7) When the Army requests rent collection and evictions, general information should be sent to the U.S. Attorney. For collection of delinquent accounts, or delinquent accounts together with eviction, information should also be sent to the U.S. Attorney.

(c) SJAs and legal advisers are authorized to represent DA in proceedings covered by this paragraph, as specified in § 516.6(b).

Subpart E—Litigation of Medical Care and Property Claims

§ 516.19 General.

(a) *Responsibility.* Litigation of claims in favor of the United States for damage to and loss or destruction of Army property, and for medical care expenses is the responsibility of Litigation Division, in conjunction with DOJ and U.S. Attorneys. The USARCS, ATTN: JACS–PC, is responsible for the supervision of administrative processing of property and medical care claims, and for all matters other than litigation concerning these claims.

(b) *Assertion of claims on behalf of the United States by private attorneys.* Claims for damages to and loss or destruction of Army property or for medical expenses may, by written agreement, be asserted by private attorneys acting on behalf of individuals based upon the same occurrence which gives rise to the claim of the United States. The Commander, USARCS will monitor such claims and will immediately notify HQDA (DAJA–LTT) in the event that litigation is initiated asserting the claim.

(c) *Authority to represent DA.* Recovery Judge Advocates (RJAs) or other attorneys designated by their supervising SJAs or legal advisers may represent DA with respect to cases covered in § 516.20(b), as specified in § 516.4(b).

(d) *Statutes of limitations.* Referrals for litigation should normally be forwarded no later than 6 months prior to the running of the applicable limitations period.

(e) *Reporting of recoveries.* All amounts recovered through litigation will be reported to JACS–PC by HQDA (DAJA–LTT) or, where direct referral of a case is made to a U.S. Attorney, by the responsible RJA.

(f) *Release of information and appearance of witnesses.* Guidance on release of information and appearance of witnesses is in subpart G.

§ 516.20 Referral of medical care and property claims for litigation.

(a) A medical care or property claim will be referred for litigation under paragraphs (b) and (c) of this section when one of the following circumstances applies:

(1) Litigation in the name of the United States is necessary to collect the Government's claim and either of the following situations exist:

(i) The injured party has instituted suit against the prospective defendant but the attorney for the injured party has not agreed in writing to represent the interests of the United States.

(ii) The attorney or the United States has withdrawn from the agreement.

(2) The prospective defendant has instituted suit against the injured party and suit is based upon the same occurrence which gave rise to the claim of the United States. (See 28 CFR 43.3(c)). The provisions of § 516.11 will be followed, where applicable, in place of this requirement.

(3) Litigation in the name of the United States is otherwise necessary to collect the Government's claim.

(b) If a claim is for $5,000 or less, collection from the injured party or his or her attorney is not sought, no question of policy is involved, and the case will not set a significant precedent (28 CFR 43.3(d)), the RJA may refer the claim directly to the U.S. Attorney for the district in which the prospective defendant resides. Notice of such referral shall be provided through JACS–PS to HQDA (DAJA–LTT).

(c) The RJA will forward the file and an appropriately adapted investigative report (§ 516.12) through JACS–PC to HQDA (DAJA–LTT) for action if a claim involves any of the following conditions:

(1) Is for more than $5,000.

(2) Involves collection from the injured party or his or her attorney.

(3) Raises a question of policy.

(4) Could set a significant precedent.

§ 516.21 Preparation for litigation.

(a) In preparing a referral for litigation the RJA will ensure the file contains, as a minimum:

(1) A letter of transmittal to the appropriate office as determined by § 516.20. It will briefly summarize the facts giving rise to the claim and the collection actions previously taken by the Army and the injured party.

(2) An appropriately adapted investigative report. (See § 516.12).

(3) Copies of all medical records and bills reflecting the reasonable value of the medical care furnished to the injured party, including DA Form 2631–R (Medical Care: Third Party Liability Notification), and DA Form 3154 (MSA Invoice and Receipt). These documents should be authenticated as necessary on a DA Form 4.

(4) Copies of all documents necessary to establish the value of lost or damaged property.

(b) The RJA will assist the U.S. Attorney and provide necessary evidence or information.

(c) If the U.S. Attorney determines further action is unwarranted, the file will be closed, unless, in the opinion of the RJA the U.S. Attorney's decision is unreasonable. In that event, the file and all correspondence will be forwarded with the RJA's opinion and recommendation thru JACS–PC to HQDA (DAJA–LTT) for action.

Subpart F—Criminal Offenses Committed on Military Installations

General

§ 516.22 Scope.

This subpart contains policies and procedures applicable to prosecution of criminal offenses committed on military installations or in which the Army otherwise has a substantial interest.

§ 516.23 Federal statutory authority.

The following statutes pertain to the prosecution of criminal offenses:

(a) 18 U.S.C. 3401.
(b) 28 U.S.C. 515.
(c) 28 U.S.C. 533.
(d) 28 U.S.C. 543.
(e) 10 U.S.C. 806.

§ 516.24 Prosecution by military authorities.

Prosecution of criminal offenses committed by persons not subject to the Uniform Code of Military Justice UCMJ is a DOJ responsibility. If no DOJ attorney is made available, qualified Army attorneys may prosecute misdemeanors committed on military installations before U.S. Magistrates and in U.S. District Court with the consent of the U.S. Attorney concerned. With prior approval from HQDA (DAJA–LT), they may also prosecute felony offenses committed on the installation, or in which the Army otherwise has a substantial interest, in U.S. District Court with the consent and under the supervision of the U.S. Attorney concerned.

§ 516.25 Designation of Army attorneys.

If no DOJ attorney is made available, the installation SJA or legal adviser will designate one or more attorneys to prosecute cases before the U.S. Magistrate and, if felony prosecution has been authorized, before the U.S. District Court. Officers of the Judge Advocate General's Corps will be used when available. Attorneys so designated must be appointed Special Assistant U.S. Attorneys under 28 U.S.C. 543. Army attorneys so appointed come under the supervision of the appropriate U.S. Attorney, but may not perform any other duties under such supervision except as specifically authorized by this regulation. Army attorneys so designated may, with the consent of the U.S. Attorney, prosecute misdemeanors in U.S. District Court in those cases in which a defendant refuses to consent to trial before a U.S. Magistrate, and represent the United States in appeals of cases tried before a U.S. Magistrate.

Misdemeanors

§ 516.26 Supervision.

Army attorneys who prosecute cases before U.S. Magistrates and in U.S. District Court act as Special Assistant U.S. Attorneys, and are subject to primary supervision by the U.S. Attorney concerned in the performance of those duties. Installation SJAs and legal advisers will closely monitor prosecutions handled by Army attorneys in Magistrate's Court and U.S. District Court, and will provide supervision as necessary through appropriate coordination with the U.S. Attorney concerned.

§ 516.27 Policy.

(a) Any individual, military or civilian, who commits a misdemeanor in an area of exclusive or concurrent Federal jurisdiction on a military installation located within the judicial district of a U.S. District Court may be prosecuted before a U.S. Magistrate (AR 190–29).

(b) If no U.S. Magistrate has been designated to try misdemeanors committed on an installation, the installation commander will request the U.S. Attorney to petition the U.S. District Court to designate a magistrate for that purpose. Such designation by the court is not mandatory. Failure to designate a magistrate after petition has been made should be reported immediately to HQDA (DAJA–LT).

§ 516.28 Complaints and warrants.

In appropriate cases, attorneys will prepare complaints setting forth the date, time, and place of offense, name of complainant, name of magistrate, offender, and a description of the offense. The magistrate has authority to issue arrest warrants based upon the complaint. Complaints must also be prepared in appropriate cases when the defendant is in custody. (See Fig F–2. Appendix F, for a sample complaint format.)

§ 516.29 Consent to be tried.

No person held for trail of a misdemeanor may be tried before the U.S. Magistrate unless he or she consents. The defendant must be informed that he or she has the right to be tried in the U.S. District Court having jurisdiction over the offense. (See figure F–2, Appendix F for a sample consent format.)

§ 516.30 Rules of procedure.

Title 18, U.S. Code Annotated contains rules of procedure to be followed in cases before the U.S. Magistrate. Attorneys designated to prosecute such cases should familiarize themselves with those rules as well as local rules adopted pursuant to those rules.

Felonies

§ 516.31 Policy.

Prosecution of felony offenses committed on military installations, or in which the Army otherwise has a substantial interest, is and should remain primarily a DOJ responsibility. Nevertheless, the Army's interest in preventing and punishing criminal conduct affecting its operations may be best served in some situations by designating Army attorneys to prosecute felonies under the supervision of the U.S. Attorney.

§ 516.32 Requests for authorization.

Where the installation SJA or legal adviser believes that prosecution of felonies by Army attorneys would be in the Army's best interest, he or she must first determine whether the U.S. Attorney is willing to allow Army attorneys to represent the United States, either alone or in conjunction with an Assistant U.S. Attorney. If the U.S. Attorney is willing, the installation SJA or legal adviser will forward a written request for authorization to HQDA (DAJA–LT).

Subpart G—Release of Information and Appearance of Witnesses

Scope

§ 516.33 General.

This section implements Department of Defense (DOD) Directive 5405.2 (See Appendix D). It governs the release of official information and appearance of present and former DA military and civilian personnel including NAF activity employees; non-U.S. nationals who perform services overseas for DA under status of forces agreements; other specific individuals hired through contractual agreements by or on behalf of DA; and U.S. Military Academy cadets, in response to subpoenas and litigation-related requests and orders for information, interviews, or attendance at judicial or quasi judicial proceedings.

Requests for records, if not in the nature of legal process, should be processed under AR 340–17 or AR 340–21, as appropriate. This chapter pertains to both civil and criminal proceedings and to both private litigation and litigation in which the United States has an interest. Those records related to litigation which are requested under the Freedom of Information Act will be retained by the custodian of the records and will not be transferred to the Litigation Division without its concurrence. This includes litigation regarding claims in § 516.1(b).

§ 516.34 Reference to HQDA.

(a) Matters which require approval or action by HQDA under this chapter will be immediately submitted by the most expeditious means to HQDA(DAJA–LTG), AUTOVON 227–3462 except that:

(1) Those involving a case assigned to another branch of HQDA(DAJA–LT) will be submitted to that branch (Appendix B).

(2) Those involving affirmative litigation under subpart E will be submitted to HQDA(DAJA–LTT), AUTOVON 227–6435.

(3) Those involving patents, copyrights, privately developed techical information, or trademarks will be submitted to HQDA(JALS–PC), AUTOVON 289–2430.

(4) Those involving taxation will be submitted to HQDA(DAJA–KL), AUTOVON 227–2376.

(5) Those involving communication, transportation, or utility service proceedings and environmental matters will be submitted to HQDA(JALS–RL), AUTOVON 289–2015.

(b) When referring matters to HQDA the following data should be provided:

(1) Parties (named or prospective) to the proceeding, their attorney, and case number, where appropriate.

(2) Party making the request (if a subpoena, indicate moving party) and his or her attorney.

(3) Name of tribunal in which the proceeding is pending.

(4) Nature of the proceeding.

(5) Date of receipt of request or date and place of service of subpoena.

(6) Name, grade, position, and organization of person receiving request or served with subpoena.

(7) Date, time, and place designated in request or subpoena for production of information or appearance of witness.

(8) Nature of information sought or document requested, and place where document is maintained.

(9) A copy of each document requested (contact HODA if this would be both unduly bordensome and unnecessary to a decision whether to release, redact, or withhold a particular document).

(10) Analysis of the problem with recommendations.

§ 516.35 Response to subponeas, requests, and orders.

(a) Except as authorized by this chapter, no present or former DA military member or civilian employee will, in response to a subpoena, court order, or other request which he or she reasonably believes is related to actual or potential litigation:

(1) Disclose any official information contained in DA files.

(2) Disclose any information acquired in the performance of his or her official duties or becasue of his or her official status.

(b) A present DA military member or civilian employee may make disclosures otherwise prohibited by a above with the prior written approval of the SJA or legal adviser serving his or her organization. Former DA military members and civilian employees may make such disclosures with the prior written approval of HQDA(DAJA–LTG).

(c) When DA military member or civilian employee receives a subpoena, court order, request for attendance at a judicial or quasi-judicial proceeding, or request for an interview he or she reasonably believes is related to actual or potential litigation, and it appears the subpoena, order or request seeks disclosures prohibited by a above, he or she should immediately advise the appropriate SJA or legal advisor. If the SJA or legal adviser, as the deciding official, cannot decide upon the appropriate response under this chapter, he or she should immediately notify HQDA under § 516.34. When a former DA military member or civilian employee receives such a subpoena, order, or request, he or she should immediately advise HQDA under § 516.34.

(d) If official information is sought, through testimony or otherwise, by a subpoena, order, or litigation-related request, the individual seeking such release or testimony must set forth, in writing and with specificity, the nature and relevance of the official information sought. Subject to § 516.39(a), present and former DA military members and civilian personnel may only produce, disclose, release, comment upon, or testify concerning those matters that were specified in writing and properly approved by the SJA or legal adviser, or HQDA, as appropriate under paragraph (b) of this section. (See *United States x. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).)

(e) In appropriate cases, the SJA or legal adviser will notify DOJ of the subpoena, order, or request. If the subpoena, order, or request appears to relate to pending litigation in which the Army or the United States has an interest and for which litigation responsibility has not been delegated under § 516.6(b), the SJA or legal adviser will coordinate with HQDA under § 516.34 regarding such notification. After consultation and coordination with HQDA and DOJ as required, a determination will be made whether to comply with the request or demand. The deciding official will notify the requester or the court or other authority of the determination reached.

(f) If a response to a subpoena or order is required before a determination can be made whether to allow the release or appearance under paragraphs (a) through (d) of this section, the deciding official will:

(1) Furnish the court or other authority a copy of this regulation.

(2) Inform the court or other authority that the subpoena or order is being reviewed.

(3) Seek a stay of the subpoena or order pending a final determination.

(g) If a court of competent jurisdiction or other appropriate authority declines to stay the affect of the subpoena or order, the present or former DA personnel subject to the subpoena or order will notify the SJA or legal adviser, or HQDA, as appropriate under paragraphs (a) and (b) of this section. If the deciding official, after any further consultation necessary under paragraph (c) of this section, determines not to seek a further challenge to the subpoena or order, the affected personnel will comply with the subpoena or order. If directed by the deciding official, however, affected personnel will respectfully decline to comply with the subpoena or order. (See *United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).)

(h) No release or appearance will be authorized in litigation involving terrorism, espionage, nuclear weapons, or intelligence means or sources without the prior written approval of HQDA.

Release of Records in Connection With Litigation

§ 516.36 Release of Army and other agency records.

(a) *Preservation.* In order to preserve the integrity of DA records, originals of books, papers, documents, and other records will not be furnished to any person or agency for use as evidence in legal proceedings. Properly authenticated copies of Government records may be submitted in evidence in place of originals. (See 28 U.S.C. 1733.)

(b) *Authentication of copies.* Copies of DA records approved for release under this regulation will, when necessary, be authenticated for introduction in evidence by use of DA Form 4 prepared in the manner shown in figure G–1 of this section. Negative results of a search are shown in figure G–2 of this section. After the custodian has executed his or her certificate, the preparing agency will forward the DA Form 4 and a copy of the record to the Army Staff agency indicated below for authentication by the Secretary of the Army.

(1) Records maintained in U.S. Army Engineer Districts and Divisions will be fowarded to HQDA(DAEN–CCK), WASH DC 20314–1000.

(2) All other records will be fowarded to the official designated in AR 340–17 as the Initial Denial Authority (IDA) for the records.

(c) *Fees and charges.* The schedule of fees and charges for searching, copying, and certifying Army records for release in response to litigation-related requests is prescribed in AR 37–60.

(d) *Release of records of other agencies.* Normally an individual requesting records originating in agencies outside DA (for example, FBI reports, local police reports, civilian hospital records) that are also included in Army records should be advised to direct his or her inquiry to the originating agency.

Figure G–1 to § 516.36—Authentication of Evidence

Department of the Army, El Paso, Texas (Place), 1 May 1990 (Date).

I HEREBY CERTIFY that the document attached hereto is a true and exact copy of the Narrative Summary, Standard Form 502, pertaining to the hospitalization of Jane Doe during the period 3–6 June 1989, an official document in the custody of the Registrar of William Beaumont Army Medical Center.

(Signature of custodian).
JOHN SMITH, Captain, MS, Registrar.
I HEREBY CERTIFY that

_____,

who signed the foregoing certificate, is the

_____,

and that full faith and credit should be given to his certification.

IN TESTIMONY WHEREOF, I,

_____,

Secretary of the Army, have hereunto caused the seal of the Department of the Army to be affixed and my name to be subscribed by the Administrative Assistant of the said Department, at the City of Washington, this _____ day of _____, ____.

Secretary of the Army.
By _____
Administrative Assistant.
DA–4 FORM 1 MAR 66
REPLACES EDITION OF 1 OCT 47, WHICH WILL BE USED.

Figure G–2 to § 516.36—Example of a Negative Search

Department of the Army, Washington, D.C. (place), 1 May 1990 (date).

I HEREBY CERTIFY that after diligent search, no General Court-Martial Record of trial pertaining to Private John Doe, SSAN: 123–45–6789, could be found in the custody of the Clerk of Court, U.S. Army Legal Services Agency, Office of The Judge Advocate General.

(Signature of custodian).
JOHN SMITH, Clerk of Court.
I HEREBY CERTIFY that

_____,

who signed the foregoing certificate, is the

_____,

and that full faith and credit should be given to his certification.

IN TESTIMONY WHEREOF, I,

_____,

Secretary of the Army, have hereunto caused the seal of the Department of the Army to be affixed and my name to be subscribed by the Administrative Assistant of the said Department, at the City of Washington, this _____ day of _____, 19____.

Secretary of the Army.
By _____
Administrative Assistant.
DA–4 FORM 1 MAR 66
REPLACES EDITION OF 1 OCT 47, WHICH WILL BE USED.

§ 516.37 Determination of release authorization.

(a) It is DA policy that official information should generally be made reasonably available for use in Federal and State courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure.

(b) In deciding whether to authorize release of official information under § 516.34 (a) and (b), the deciding official should consider whether:

(1) The request or demand is unduly burdensome or otherwise inappropriate under the applicable court rules.

(2) The disclosure, including release in camera, is appropriate under the rules of procedure governing the case or matter in which the request or demand arose.

(3) The disclosure would violate a statute, executive order, regulation, or directive.

(4) The disclosure, including release in camera, is appropriate or necessary under the relevant substantive law concerning privilege.

(5) The disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified pursuant to the DOD Information Security Program under AR 380–5, unclassified technical data withheld from public release pursuant to 32 CFR part 250 or other matters exempt from unrestricted disclosure.

(6) Disclosure would have one or more of the following effects:

(i) Interfere with ongoing enforcement proceedings.

(ii) Compromise constitutional rights.

(iii) Reveal the identity of an intelligence source or confidential informant.

(iv) Disclose trade secrets or similarly confidential commercial or financial information.

(v) Otherwise be inappropriate under the circumstances.

§ 516.38 Records determined to be releasable.

If the deciding official, after considering the factors set forth in § 516.37, determines in writing that all or part of requested official records are releasable, copies of the records (authenticated if necessary) should be furnished to the requester, court, or other appropriate authority.

§ 516.39 Records determined to not be releasable.

(a) If the deciding official, after considering the factors set forth at § 516.37 (a) and (b), determines in writing that all or part of requested official records should not be released, he or she will, if appropriate, promptly communicate directly with the attorney or other individual who caused the issuance of any subpoena or order and seek to resolve the matter informally. If the subpoena or order is invalid, he or she should explain the basis of the invalidity. He or she should also explain why the records requested are privileged from release. The deciding official should attempt to obtain the agreement of the requester to withdraw the subpoena or order or to modify the request so that it pertains only to records which may be released.

(1) A subpoena duces tecum or other legal process signed by an attorney or clerk of court that seeks the disclosure of records protected by the Privacy Act, 5 U.S.C. 552a, does not justify the release of the protected records. The deciding official should explain to the requester that the Privacy Act precludes disclosure of any records in a system of records without the written consent of the subject of the records, except in certain situations. (See 5 U.S.C. 552a(b).) There is an exception for disclosure "pursuant to the order of a court of competent jurisdiction," 5 U.S.C. 552a(b)(11), but an "order of the court" for the purpose of subsection (b)(11) is

an order or writ requiring the production of the records and signed by the judge (or magistrate) in the case, not by an attorney or clerk of court.

(2) Unclassified records otherwise privileged from release under 5 U.S.C. 552a may be released to the court under either of the following conditions:

(i) The subpoena is accompanied by an order described in paragraph (a)(1) of this section, or such order is separately served, that orders the person to whom the records pertain to release the specific records, or that orders copies of the records delivered to the clerk of court, and indicates that the court has determined the materiality of the records and the nonavailability of a claim of privilege.

(ii) The clerk of the court is empowered by local statute or practice to receive the records under seal subject to request that they be withheld from the parties until the court determines whether the records are material to the issues and until any question of privilege is resolved.

(3) Subpoenas for alcohol abuse or drug abuse treatment records must be processed under 42 U.S.C. 290dd–3 and ee–3, and regulations published at 42 CFR part 2.

(4) Upon request, SJAs and legal advisers may furnish to the attorney for the injured party or the tortfeasor's attorney or insurance company a copy of the narrative summary of medical care which relates to a claim under subpart E. If additional medical records are requested, only those that directly pertain to the pending action will be furnished. If furnishing copies of medical records would be dangerous to the injured party's health or prejudice the cause of action, the matter will be reported to HQDA under § 516.34.

(b) If the SJA or legal adviser is not able, as the deciding official, to resolve the matter informally, he or she should promptly contact HQDA under § 516.34.

(1) HQDA (DAJA–LT) may respond to subpoenas or orders for records privileged from release by informing the local U.S. Attorney about the subpoena and requesting him or her to file a motion to quash the subpoena or a motion for a protective order. The records privileged from release should be retained by the custodian pending the court's ruling upon the Government's motion.

(2) When a motion to quash or for a protective order is not filed, or the motion is unsuccessful, and the appropriate DA official has determined that no further efforts will be made to protect the records, copies of the records (authenticated if necessary) will be submitted to the court (or to the clerk of court) in response to the subpoena or order.

(c) Subpoenas duces tecum, and other legal process from DOJ, U.S. Attorneys, or attorneys for other governmental entities for records which are privileged from release will be referred to HQDA under § 516.34.

DA Personnel as Witnesses in Private Litigation

§ 516.40 Response to subpoenas, orders, or requests for witnesses.

(a) The involvement of present DA military personnel and civilian employees in private litigation is solely a personal matter between the witness and the requesting party, unless one or more of the following conditions apply:

(1) The testimony involves information contained in DA files, or information which was acquired in the performance of official duties, or because of the official status of the witness.

(2) The witness is to testify as an expert.

(3) The absence of the witness from duty will seriously interfere with the accomplishment of a military mission.

(b) Former DA military personnel or civilian employees may freely respond to requests for interviews and subpoenas except in instances involving paragraph (a)(1) of this section. In those instances, the subject of the request or subpoena should take the action specified in §§ 516.34(b) and 516.35(c).

(c) Requests for interviews and subpoenas for the testimony of present DA military personnel or civilian employees in private litigation will be referred to the individual's commander or supervisor. Except in instances involving paragraphs (a) (1) through (3) of this section, the commander or supervisor may permit the requested interview or attendance.

(d) If for personal reasons a present military member, or civilian employee authorized legal assistance under AR 27–3, does not desire to grant the interview or testify, he or she may seek counseling by a JA or DA civilian attorney on the legal consequences, if any, of his or her refusal. Civilian employees and former military members not otherwise entitled to legal assistance should consult private counsel regarding the consequences, if any, of such refusal.

§ 516.41 Official information.

(a) In instances involving § 516.40(a)(1), the matter will be referred to the SJA or legal adviser serving the organization of the individual whose testimony is requested, or HQDA, as appropriate. The appropriate official will process the question of the release of the information sought under the principles established in § 516.37. If funding by the United States is requested, see § 516.48(d).

(b) If it is determined that the information may be released, the individual will be permitted to be interviewed, deposed, or to appear as a witness in court provided such interview or appearance is consistent with the requirements of §§ 516.42 and 516.43. A JA or DA civilian attorney should be present during any interview or testimony to act as legal representative of the Army. In the case of former DA military members or civilian employees, HQDA will arrange, as needed and to the extent practicable, for an Army attorney stationed near the location of the interview, deposition, or testimony to act as legal representative. If a question is asked which seeks information not previously authorized for release, the legal representative will advise the witness not to answer. If necessary to avoid release of the information, the legal representative will advise the witness to terminate the interview or deposition, or in the case of testimony in court, advise the judge that DOD directives and Army regulations preclude the witness from answering without DA approval. However, every effort should be made to substitute releasable information and to continue the interview or testimony as to other subjects.

(c) A report of the matter will then be made to HQDA under § 516.34. Any written statement submitted by the present or former military member or civilian employee will be prepared under the supervision of the legal representative.

§ 516.42 Expert witnesses.

(a) DA maintains strict impartiality in private litigation and conflicts of interest are to be avoided (AR 600–50). DA policy is that present or former present DA military members personnel or civilian employees will not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities in private litigation or in litigation in which the United States has an interest for a party other than the United States without the prior approval of HQDA. Former DA military personnel or civilian employees will not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities in private litigation or in litigation in which the United States has an interest or a party other than the United States

without the prior approval of HQDA. Such requests for present or former DA military personnel or civilian employees as opinion or expert witnesses will be forwarded to HQDA under § 516.34, unless paragraph (b) of this section applies. Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of DA, DOD, or the United States, HQDA may grant special written authorization for present or former DA military members or civilian personnel to appear and testify at no expense to the United States. If, despite an adverse final determination by HQDA, a court of competent jurisdiction, or other appropriate authority, orders the appearance and expert or opinion testimony, the witness will immediately notify HQDA under § 516.34. If HQDA determines that no further challenge to the subpoena or order will be sought, the witness will comply with the subpoena or order. If directed by HQDA, however, the witness will respectfully decline to comply with the subpoena or order. (See *United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).)

(b) Members of the Army Medical Department or other qualified specialists may testify in private litigation within the following limitations:

(1) The litigation involves patients they have treated, investigations they have made, laboratory tests they have conducted, or other action they have taken in the regular course of their military duties.

(2) They limit their testimony to factual matters such as:

(i) Their observations of the patient, or other operative facts.

(ii) The treatment prescribed or corrective action taken.

(iii) Course of recovery or steps required for repair of damage suffered.

(iv) Contemplated future treatment or utility of item damaged.

(3) Their testimony may not extend to hypothetical questions or to a prognosis.

(c) All fees tendered to a present DA military member or civilian employee as an expert witness under paragraph (b) of this section, to the extent they exceed actual travel, meals, and lodging expenses of the witness, will be remitted to the Treasurer of the United States.

§ 516.43 Interface with mission accomplishment.

When the absence of a witness from duty will seriously interfere with the accomplishment of a military mission, the SJA or legal adviser concerned will refer the matter to HQDA under § 516.34.

Litigation in Which the United States Has an Interest

§ 516.44 Responses to subpoenas, orders or requests for witnesses.

(a) Requests for interviews with or subpoenas for testimony of present DA military personnel or civilian employees in litigation in which the United States has an interest will be immediately referred to the SJA or legal adviser serving the organization of the individual whose interview or testimony is requested. Except as in paragraph (b) of this section, the SJA or legal adviser will promptly refer the matter to HQDA under § 516.34. This requirement includes requests received from DOJ. Since each request or subpoena involves a question of release of information, the SJA or legal adviser will ensure that this aspect of the request or subpoena is also presented in the referral to HQDA. Former DA military members or civilian personnel will immediately refer such requests to HQDA under § 516.34.

(b) The SJA or legal adviser may authorize the appearance of present DA personnel requested by U.S. Attorneys or by attorneys representing the interests of the United States (for example, attorney handling the Government's medical care claim) provided:

(1) The request or subpoena does not require travel by the witness outside the judicial district (unless the distance to be traveled is less than 100 miles) or overseas theater in which the witness is stationed, assigned, or employed.

(2) The testimony of the witness does not involve information which must be withheld under the principles in §§ 516.26 through 516.30.

(c) When requested by the U.S. Attorney, the SJA or legal adviser will ensure that no military personnel or civilian employee witnesses are reassigned or otherwise removed from the judicial district without first advising the U.S. Attorney. If a witness is vital to the Government's case, informal arrangements should be made to retain the witness in the command until trial. If this is not feasible, or if a satisfactory arrangement cannot be reached with the U.S. Attorney, HQDA should be notified under § 516.34.

§ 516.45 Expert witnesses.

Requests for present or former DA military members or civilian personnel from U.S. Attorneys or other attorneys representing the interests of the United States will be referred to HQDA under § 516.34 unless the request involves a matter in which the SJA or legal adviser is representing DA under § 516.6(b).

§ 516.46 News media and other inquiries.

News media inquiries regarding matters in litigation or in potential litigation will be referred to the appropriate public affairs office. DA military or civilian personnel will not comment on any matter actually or potentially in litigation without proper clearance. Local public affairs officers will refer these press inquiries to HQDA (SAPA), WASH DC 20310–1500, with appropriate recommendations for review and approval by the Office of the Chief of Public Affairs. All releases of information regarding matters actually or potentially in litigation will be coordinated with HQDA (DAJA–LT) prior to release.

Status, Travel, and Expenses of Witnesses

§ 516.47 Witnesses for the United States.

(a) *Status of witness.* A military member authorized to appear as a witness for the United States, including those authorized to appear under § 516.48(d), will be placed on temporary duty. The status of a civilian employee will be determined under Federal Personnel Manual 630.10. Military personnel and civilian employees who appear as necessary witnesses for a party asserting the Government's claim for medical care expenses are witnesses for the United States, provided the Government's claim is large enough to justify the expenditure.

(b) *Travel arrangements.* Travel arrangements for witnesses for the United States normally are made by DOJ through TJAG for other than local travel. Instructions for this travel, including fund citation, will be issued to the appropriate commander by HQDA. A U.S. Attorney, or an attorney asserting the Government's medical care claim under subpart E, may make arrangements for local travel through the SJA or legal adviser for attendance of a witness who is stationed at an installation within the same judicial district, or not more than 100 miles from the place where testifying. Other requests, including those under § 516.48(d) will be referred to HQDA under § 516.34. The instructions from HQDA, or the request from the U.S. Attorney or the attorney asserting the Government's claim, will serve as a basis for the issuance of appropriate travel orders by the local commander.

(c) *Travel and per diem expenses.* The witness's commander or supervisor should ensure that the witness has sufficient funds to defray expenses. The SJA or legal adviser will provide assistance as required.

(1) Where local travel is performed at the request of a U.S. Attorney and the case does not involve an activity of the Army, the Government transportation request should be issued to the witness through the U.S. Attorney making the request or by the U.S. Marshal. Per diem should be paid by the U.S. Marshal.

(2) An attorney asserting the Government's medical care or property claim may be required to advance local travel expense money to the witness requested and to include these in recoverable costs where the Government's claim is not large enough to justify expenditures of Government travel funds.

(3) Other local travel and per diem expense for cases involving Army activities or claims is a proper expense of the command issuing the orders.

(4) HQDA will furnish travel expense and per diem funds for other than local travel and will receive reimbursement from DOJ or other Government agencies as appropriate.

§ 516.48 Witnesses for a state or private litigant.

(a) *Status of witness.* If authorized to appear as a witness for a State or private litigant, and the testimony to be given relates to information obtained in the performance of official duties, a military member will attend in a permissive temporary duty (TDY) status. If authorized to appear as a witness, but the testimony does not relate to information obtained in the performance of official duties, a military member may be granted a pass or permissive TDY under AR 630–5, or be required to take ordinary leave. The status of a civilian employee will be determined under Federal Personnel Manual 630.10.

(b) *Travel arrangements.* Travel arrangements for attendance of military or civilian personel authorized to appear as witnesses for a State or private litigant will be made by the requesting party with the individual concerned. Appropriate orders will be issued by the local commander when necessarly.

(c) *Travel expenses.* Travel, meals, and lodging expenses of the witness, other than normal allowances for subsistence pursuant to the DOD Military Pay and Allowances Entitlements Manual, may not be paid by the United States. They are solely a matter between the witness and the party seeking his or her appearance. Witnesses ordinarily should be advised to require advance payment of such expenses. Military personnel authorized to appear in a pass or permissive TDY status are not entitled to receive witness attendance fees, but may accept travel, meals, and lodging expense money from the requesting litigant. All witness fees tendered the military member, to the extent they exceed such actual expenses of the member, will be remitted to the Treasurer of the United States. A civilian employee authorized to appear in his or her official capacity will accept the authorized witness fees, in addition to the allowance for travel and subsistence, and make disposition of the witness fees as instructed by his or her personnel office.

(d) *Funding by the United States.* Requests for military or civilian personnel to appear at Government expense as witnesses in state or local proceedings for a party other than the United States, including cases involving domemstic violence or child abuse, will be referred to HQDA under § 516.34. Travel and per diem expenses may be authorized by HQDA under § 516.47 when it is determined that the case is one in which the United States has a significant interest.

§ 516.49 Witnesses before foreign tribunals.

(a) Requests or subpoenas from a foreign government or tribunal for present DA military personnel and civilian employees stationed or employed within that country to be interviewed or to appear as witnesses will be forwarded to the SJA of the command exercising general court-martial jurisdiction over the unit to which the individual is assigned, attached, or employed. The SJA will determine whether:

(1) A consideration listed in § 516.39 (a) (1) through (3) applies.

(2) The information requested is releasable under the principles established in §§ 516.26 through 516.30.

(3) The approval of the American Embassy should be obtained because the person is attached to the Embassy staff or a question of diplomatic community may be involved.

(b) If the SJA determines that the United States has an interest in the litigation, the commander may authorize the interview or order the individual's attendance in a temporary duty status. The United States will be deemed to have an interest in the litigation if it is bound by treaty or other international agreement to ensure the attendance of such personnel.

(c) If the SJA determines that the United States does not have an interest in the litigation, the commander may authorize the interview or the appearance of the witness under the principles established in §§ 516.40 through 516.43.

(d) If the requested witness is stationed in the United States, or in a country other than that which is seeking the witness' testimony, the matter will be referred to HQDA under § 516.34.

Subpart H—Remedies in Procurement Fraud and Corruption

§ 516.50 Purpose.

This chapter delineates the policies, procedures, and responsibilities for reporting and resolving allegations of procurement fraud or irregularities (PFI) within DA. It implements DOD Directive 7050.5. (See Appendix E.)

§ 516.51 Policies.

(a) Procurement fraud and irregularities will be promptly and thoroughly addressed whenever encountered. Reports will be initiated in a timely manner and will be supplemented as appropriate.

(b) Investigations will be monitored to see that interim corrective action is taken as appropriate, and that final action is taken as expeditiously as possible.

(c) This regulation establishes the Procurement Fraud Division (PFD), U.S. Army Legal Services Agency, as the single centralized organization within the Army to coordinate and monitor criminal, civil, contractual, and administrative remedies in significant cases of fraud or corruption relating to Army procurement.

(d) The key elements of the Army's procurement fraud program are centralized policy making and program direction; fraud remedies coordination; decentralized responsibility for operational matters, such as reporting and remedial action; continuous case monitorship by PFD from the time fraud is first reported until final disposition; and command-wide fraud awareness training.

(e) Remedies for PFI will be pursued in a timely manner and properly coordinated with other agencies. Every effort will be made to support criminal investigation and prosecution of fraudulent activity.

(f) A specific remedies plan will be formulated for each significant case of fraud or corruption involving procurement.

(g) Coordination on the status and disposition of cases will be maintained between PFD, OTJAG, and PFI Coordinators at major commands (MACOMs). Coordination of procurement and personnel actions will be accomplished with investigative agencies as required by those agencies.

(h) Training which relates to fraud and corruption in the procurement

process is a significant element of this program.

§ 516.52 Responsibilities.

(a) TJAG has overall responsibility for the coordination of remedies in procurement fraud and corruption within the Army. This responsibility has been delegated to PFD. Functions of PFD will include:

(1) Serving as the single centralized organization in the Army to monitor the status of, and ensure the coordination of, criminal, civil, contractual, and administrative remedies for each significant case of fraud or corruption.

(2) Receiving reports of procurement fraud and corruption from any source including, but not limited to:

(i) DOD criminal investigative organizations.

(ii) Audit agencies.

(iii) Contracting officers.

(iv) Inspectors general of the executive branch.

(v) Correspondence from the public.

(vi) Commanders.

This provision does not repeal any other reporting requirement but establishes PFD as a recipient of PFI information at the earliest possible time.

(3) Establishing a monitoring system within OTJAG for all cases of fraud and corruption that relate to Army procurement.

(4) Discussing regularly with the U.S. Army Criminal Investigation Command (USACIDC) or the assigned DOD criminal investigative organization the current status of significant fraud or corruption cases and their coordination with prosecutive authorities.

(5) Ensuring that all criminal, civil, contractual, and administrative remedies are considered in each significant fraud or corruption case and that timely and applicable remedies are undertaken by commanders, contracting officers, and suspension and debarment authorities. For example, consideration of suspension or debarment of a contractor or individual should normally be initiated within 30 days of indictment or conviction.

(6) Coordinating, as appropriate, with other DOD components affected by a significant fraud or corruption case being monitored by the Army.

(7) Developing, with the responsible DOD investigative organization, Procurement Fraud Coordinators, and other involved agencies, a specific comprehensive remedies plan for each significant fraud or corruption case.

(8) Coordinating remedies with DOJ. In the case of ongoing criminal investigations, coordinate these through, or with the prior knowledge of, the DOD criminal investigative organization responsible for the case.

(9) In significant fraud or corruption cases, identifying and documenting any known adverse impact on a DOD mission, and including the information in any remedies plan.

(10) Providing the appropriate DOD criminal investigative organization with information concerning remedies finally arrived at as a result of an investigation by that organization.

(11) Receiving notifications from criminal investigative agencies concerning substituted, defective, and counterfeit hardware in which a Serious Hazard to health, safety or operational readiness is indicated; ensuring that appropriate safety, procurement and program officials are informed in accordance with enclosure 3 of DoD Directive 7050.5. PFD will specifically ensure that contract reviews (DD 350 reports) and adverse impact statements (§ 516.57(c)(2)) are prepared, and that such information is used to determine if further inquiry is warranted, to prevent reoccurrence, and to detect other possible fraud. Impact statements will not be released to prosecutive agencies until reviewed by PFD. When appropriate, PFD will coordinate with other DoD agencies to establish a lead agency for victim impact statements in multi-DoD agency cases.

(b) The Commanding General, USACIDC, will:

(1) Notify PFD of any investigations involving fraud or corruption related to procurement activities.

(2) Promptly notify other DOD component criminal investigative organizations when investigations involving fraud or corruption affect that component. This includes evidence of fraud by a contractor, subcontractor, or employee of either, on current or past contracts with, or affecting, that component.

(3) Promptly notify the Defense Investigative Service of any investigations that develop evidence which affects DOD cleared industrial facilities or personnel.

(4) Determine the effect on any ongoing investigations or prosecutions of any criminal, civil, contractual, or administrative actions being considered by a centralized organization and advise of any adverse impact.

(5) Promptly provide to commanders, contracting officers, Procurement Fraud Advisors, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption from ongoing or completed criminal investigations. In cases of indictment or conviction of a contractor or individual, the information will be provided in time for initiation, if appropriate, of suspension or debarment action within 30 days of the indictment or conviction.

(6) Provide prosecutive authorities and centralized organizations with timely information on the adverse impact on a DOD mission of fraud or corruption that relates to DOD procurement activities. This information shall be obtained from individuals such as the head of the contracting agency, appropriate commanders, and/or staff agencies. Some examples of adverse impact on a DOD mission are endangerment of personnel or property, monetary loss, compromise of the procurement process, or reduction or loss of mission readiness.

(7) Discuss regularly with Procurement Fraud Advisors the status of significant investigations of fraud or corruption and their coordination with prosecutive authorities and provide documents and reports resulting from the investigations.

(c) Commanders of service schools conducting procurement or procurement-related training (such as The Judge Advocate General's School, the U.S. Military Police School, and the U.S. Army Logistics Management Center) will ensure that:

(1) All procurement and procurement-related training includes a period of instruction on fraud and corruption in the procurement process. The length of the period of instruction will be appropriate to the duration and nature of the training.

(2) Training materials are developed to support that training.

(3) Training materials developed will be sent to MACOM PF Coordinators.

(d) MACOM commanders and heads of contracting activities will ensure that:

(1) Substantial indications of fraud or corruption relating to Army contracts or Army administered contracts is reported promptly to the supporting USACIDC element and HQDA (DAJA-PF), WASH DC 20310-2217.

(2) Information provided includes reports by contracting officers under DFARS 48 CFR 209.472 and Army Federal Acquisition Regulation Supplement (AFARS) 48 CFR 5109.472-2.

§ 516.53 Procurement fraud and irregularities programs at MACOMs.

(a) Command counsel and SJAs at MACOMs will develop a program and appoint an attorney as PFI Coordinator for their command. Chief counsel and SJAs at major subordinate commands will appoint an attorney as a Procurement Fraud Advisor (PFA) to

manage the PFI program at their installations as well.

(b) Provision may be made for activities not having sufficient attorney assets to obtain assistance from nearby installations that have a PFA.

(c) Reports and recommendations will be transmitted through command channels to the PFI coordinator for the affected MACOM.

(d) Command counsel, chief counsel, and SJAs will exercise supervisory authority to ensure effective operation of the fraud program within their organizations.

(e) Appendix F contains a sample installation PFA program standing operating procedures.

(f) The MACOM PFI Coordinator will have overall responsibility for the design and implementation of the MACOM's procurement fraud program.

(g) PFAs and PFI Coordinators will coordinate with the appropriate local CID or Defense Criminal Investigative Service (DCIS) activity to assure the prompt notification and coordination of all Procurement Fraud cases.

§ 516.54 Reporting requirements.

(a) Typical fraud indicators during the procurement cycle are listed in Appendix G. The mere presence of one or more of these indicators does not, by itself, require reporting under paragraph (b) of this section. Reports should be submitted only if there is substantial indication of procurement fraud or irregularity and the procuring agency refers the matter for investigation.

(b) "Procurement Flash Reports" will be transmitted by DATAFAX directly to PFD whenever a PFI Coordinator or PFA receives notice of a PFI involving the Army. To facilitate filing, a separate sheet should be used for each case reported. These reports will provide a succinct summary of the following available information:

(1) Name and address of contractor.

(2) Known subsidiaries of parent firms.

(3) Contracts involved in potential fraud.

(4) Nature of potential fraud.

(5) Summary of pertinent facts.

(6) Possible damages.

(7) Investigative agencies involved.

(8) Local PFAs (name and phone numbers).

Any of the above categories that cannot be completed will be annotated as "unknown at present."

(c) When a report is required by DFARS or is requested by PFD, the provisions of DFARS 48 CFR 209.472 and AFARS 48 CFR 5109.474–2 will be followed. Those paragraphs provide the basic content and format for PFI reports.

(d) All personnel will cooperate to ensure that investigations and prosecutions of procurement fraud are completed in a timely and thorough manner. Requests for assistance from Federal prosecutors should be processed through the local PFA whenever possible. Requests for Federal investigators will be processed through the supporting USACIDC and the PFA will be notified. When the conduct of criminal investigations and prosecutions conflict with the progress of procurements, reasonable deference will be given to criminal investigators and prosecutors whenever possible. Any serious conflict that cannot be resolved at a local level will be immediately reported to the PFI Coordinator for action.

(e) PFI Coordinators and PFAs may request access to information obtained during criminal investigations that is not protected by rule 6(e) of the Federal Rules of Criminal Procedure and use this information to assist them in taking appropriate administrative, contractual, and civil remedies. Requests for this information should be made directly to the appropriate Federal investigative agency. The investigative organization may withhold requested information if release would compromise an ongoing investigation. Difficulties in obtaining information which cannot be resolved locally will be referred to PFD for appropriate action.

(f) USACIDC will notify in writing local PFAs as well as HQDA (DAJA–PF), WASH DC 20310–2217, within 30 days of initiation of a significant investigation of fraud or corruption related to Army procurement activities. Such notification will include the following:

(1) Case title.

(2) USACIDC Report of Investigation number.

(3) Responsible investigative agency or agencies.

(4) Office of primary responsibility.

(5) Date opened.

(6) Summary of facts.

(7) Suspected offense.

(g) The transmission of the information in paragraph (f) of this section may be delayed if the Commanding General, USACIDC, or the head of another DOD criminal investigation organization determines the transmission would compromise the success of any case or its prosecution. The prosecutive authorities dealing with the case will be consulted, when appropriate, in making such determinations.

(h) USACIDC will obtain the information below at the earliest possible point in an investigation of fraud or corruption that relates to DOD procurement activities, without reliance on grand jury subpoenas.

(1) The individuals suspected to be responsible.

(2) The suspected firm's organizational structure.

(3) The firm's financial and contract history.

(4) The firm's organizational documents and records.

(5) Statements of witnesses.

(6) Monetary loss to the Government.

(7) Other relevant information.

This information will be provided to PFD or other cognizant DOD centralized organization.

(i) PFD will provide written notification to the Defense Investigative Service of all suspension or debarment actions taken by the Army.

§ 516.55 PFD and HQ USACIDC coordination.

PFD and HQ USACIDC will:

(a) Discuss the status of significant procurement fraud or corruption investigations being conducted by USACIDC and possible remedies. These discussions should take place on a regular basis, but not less than once a quarter.

(b) Discuss the coordination of possible criminal, civil, contractual, or administrative remedies with prosecutive authorities.

(c) PFD will maintain liaison with other DOD centralized organizations and will coordinate remedies with those centralized organizations affected by a significant investigation of fraud or corruption that relates to DOD procurement activities.

(d) Ascertain the effect on any ongoing investigation of the initiation of civil, contractual, or administrative remedies as follows:

(1) PFD will maintain liaison with USACIDC and other DOD criminal investigative organizations in order to determine the advisability of initiating any civil, contractual, or administrative actions.

(2) USACIDC will advise PFD of any adverse effect on an investigation or prosecution by the initiation of civil, contractual, or administrative actions.

§ 516.56 Coordination with DOJ.

(a) PFD will establish and maintain liaison with DOJ and the Defense Procurement Fraud Unit on significant fraud and corruption cases to:

(1) Monitor criminal prosecutions.

(2) Initiate litigation for civil recovery.

(3) Coordinate administrative or contractual actions while criminal or civil proceedings are pending.

(4) Coordinate settlement agreements or proposed settlements of criminal, civil, and administrative actions.

(5) Respond to DOJ requests for information and assistance.

(b) In cases where there is an ongoing criminal investigation, coordination with DOJ by any member of the Army normally will be accomplished by or through USACIDC or the cognizant DOD criminal investigative organization, or with the investigative organization's advance knowledge. This does not apply to the routine exchange of information between Government attorneys in the course of civil litigation or the routine referral of cases to DOJ for civil recovery.

(c) Initial contact by any attorney associated with the U.S. Army with a U.S. Attorney's office or DOJ, whether initiated by the Army attorney or not, will be reported to PFD. Activity after the initial contact will only be reported to PFD when the Army attorney feels there has been a significant event in the case. If the Army attorney is not a PFI Coordinator or a PFA, the matter should be referred to one of these two latter attorneys as soon as possible. Routine exchanges between Army attorneys and U.S. Attorney's offices or DOJ do not need to be brought to the attention of PFD.

§ 516.57 Comprehensive remedies plan.

(a) A specific, comprehensive remedies plan will be developed in each significant investigation involving fraud or corruption that relates to Army procurement activities. When possible, these plans should be forwarded with the DFARS 48 CFR 209.472 reports. In no case, however, should the report be delayed an appreciable time pending completion of the plan.

(b) The plan will be developed initially by the PFA except in exceptionally large or complex cases. In those cases, the PFA should initiate coordination of a remedies plan early with PFD.

(c) A comprehensive remedies plan will include the following information and considerations:

(1) Summary of the allegations and investigative results to date.

(2) Statement of any adverse impact on a DOD mission. DOD investigative organizations, commanders, or procurement officials will also provide this information to prosecutive authorities to enhance prosecution of offenses or to prepare a victim impact statement pursuant to Rule 32(c)(2), Federal Rules of Criminal Procedure.

(3) The impact upon combat readiness and safety of DA personnel.

(4) Consideration of each criminal, civil, contractual, and administrative remedy available, and documentation of those remedies, either planned, in progress or completed.

(5) Restrictions on the pursuit of any remedies such as grand jury information or possible compromise of the investigation.

(6) The format for a remedies plan is contained in Appendix H.

(d) When remedies plans are received by PFD they will be coordinated with the headquarters of the appropriate DOD criminal investigative organization involved.

§ 516.58 Litigation reports in civil recovery cases.

(a) All substantiated PFI cases will be evaluated by PFAs to determine whether it is appropriate to recommend civil recovery proceedings.

(b) Recovery should be considered under both statutory and common law theories, including but not limited to the following:

(1) False Claims Act, 31 U.S.C. 3729.

(2) Anti-Kickback Act, 41 U.S.C. 51.

(3) Sherman Act, 15 U.S.C. 1–7.

(4) Racketeer Influenced and Corrupt Organizations, 18 U.S.C. 1961.

(5) Common law fraud.

(6) Unjust enrichment.

(7) Constructive trust.

(8) Cases where contracts have been procured in violation of the conflict of interest statute, 18 U.S.C. 218. See *K&R Engineering Co.* v. *U.S.*, 616 F.2d 469 (Ct. Cl., 1980).

(c) When civil recovery appears possible, a litigation report will be prepared and forwarded through channels to PFD. This report should summarize the available evidence and applicable theories of recovery and be prepared under § 516.12. To avoid unnecessary duplication of effort, recovery reports may include and make liberal references to other reports previously prepared on a given case such as the DFARS 48 CFR 209.472 report.

(d) The PFA will monitor all civil fraud recovery efforts throughout the command and will provide training and technical assistance as required. Monthly status reports of all civil fraud recovery efforts will be provided through channels to PFD.

§ 516.59 Administrative/contractual actions.

(a) The following remedial options should be considered in response to confirmed fraudulent activity:

(1) *Contractual.* (i) Termination of contract for default.

(ii) Nonaward of contract based upon a finding of contractor nonresponsibility. (If this appears to be a valid option, a DFARS 48 CFR 209.472–2 report must be prepared where contractor nonresponsibility is based on lack of integrity).

(iii) Rescission of contract.

(iv) Revocation of acceptance.

(v) Use of contract warranties.

(vi) Withholding of payments to contractor.

(vii) Offset of payments due to contractor from other contracts.

(viii) Revocation of facility security clearances.

(ix) Increased level of quality assurance.

(x) Refusal to accept nonconforming goods.

(xi) Denial of claims submitted by contractors.

(xii) Removal of contract from automated solicitation or payment system.

(2) *Administrative.* (i) Change in contracting forms and procedures.

(ii) Removal or reassignment of Government personnel.

(iii) Review of contract administration and payment controls.

(iv) Revocation of warrant of contracting officer.

(v) Suspension of contractor.

(vi) Debarment of contractor.

(b) In cases which are pending review or action by DOJ, PFAs should coordinate with the Justice attorney handling the case prior to initiating any contractual or administrative remedy. In the case of ongoing criminal investigations, this coordination will be accomplished through the appropriate Defense criminal investigation organization.

§ 516.60 Overseas cases of fraud or corruption.

(a) The procedures of this regulation do not apply to overseas cases of fraud or corruption that relate to the procurement process and involve only foreign firms and individuals.

(b) Commanders of overseas major commands shall establish procedures, similar to this regulation and consistent with regulations and directives of their respective unified commands, for coordination of available remedies in overseas procurement fraud and corruption cases involving foreign firms and individuals.

(c) Suspension and debarment of foreign firms and individuals is governed by DFARS 48 CFR 209.473.

(d) Overseas cases of fraud or corruption related to the procurement process that involve U.S. firms or U.S.

citizens will be referred to HQDA(DAJA–PF), WASH DC 20310–2217, for coordination of remedies under this regulation.

§ 516.61 Program Fraud Civil Remedies Act (PFCRA).

(a) PFCRA was enacted on 21 October 1986 (Public Law 99–509). It was implemented by the DoD on 30 August 1988 (DoD Directive 5505.5, See 32 CFR part 277) and the Army on 4 January 1989. (See Appendix J.) The Army implementation was amended on 26 May 1989. (See Appendix K.)

(b) PFCRA expands the capability of the Government to deter and recover losses from false, fictitious or fraudulent claims and statements. It is also applicable to program fraud and provides an administrative remedy in addition to those otherwise available to the Army in procurement fraud or pay and entitlements fraud cases.

(c) As part of the Army implementation, the Secretary of the Army's duties and responsibilities under PFCRA as Authority Head are delegated to the Army General Counsel. The Assistant Judge Advocate General for Military Law is designated the Army's Reviewing Official within the meaning of PFCRA. Army implementation also requires DA to follow the policies and procedures prescribed in enclosure 2 of DoD Directive Number 5505.5. (See 32 CFR part 277.)

(d) The DoD Inspector General (IG) is the Investigating Official within DoD. The duties of this position will be performed by the Assistant IG for Criminal Investigations, Policy and Oversight. This individual is vested with the authority to investigate all allegations of liability under PFCRA. That authority includes the power to task subordinate investigative agencies to review and report on allegations that are subject to PFCRA. If the Investigating Official concludes that an action under PFCRA is warranted in an Army case, the official will submit a report containing the findings and conclusions of such investigation through PFD to the Army Reviewing Official.

(e) Pursuant to DoD IG guidance, USACIDC will forward appropriate cases that appear to qualify for resolution under PFCRA to the Investigating Official in a timely manner. Additionally, USACIDC will forward current information regarding the status of remedies pending or concluded. USACIDC may obtain remedies information by coordinating with PFD and the cognizant command.

(f) In pay and entitlement or transportation operation fraud cases, USACIDC will coordinate with the Office of the Secretary of the Army, Financial Management, Review and Oversight Directorate (SAFM–RO) to determine the status of any pending or proposed action under the Debt Collection Act. This information, in addition to information obtained under § 516.61(e) of this section, will be forwarded with appropriate cases to the Investigating Official.

(g) In those cases where the Investigating Official has submitted a report to the Army Reviewing Official for action under PFCRA, PFD will, at the direction of the Reviewing Official, prepare all legal memoranda as necessary to transmit the Reviewing Official's intention to issue a complaint. As part of this responsibility PFD will: Coordinate with the affected command or agency to ensure that all appropriate remedies have been considered; evaluate the overall potential benefits to the Army; and, ensure that action under PFCRA is not duplicative of other remedies already taken. In order to fully supplement the Reviewing Official's file, PFD may request a litigation report (as defined in § 516.58(c).

(h) PFD will coordinate all cases involving transportation operations emanating from Military Traffic Management Command (MTMC) activity, under the military transportation exception to the FAR, and all cases involving pay and entitlements fraud with SAFM–RO, for comments and recommendations. These matters will be forwarded with the case file to the Reviewing Official.

(i) If the Attorney General approves the issuance of a complaint, PFD, at the direction of the Army Reviewing Official, shall prepare the complaint and all necessary memoranda as required. PFD shall also designate attorneys to represent the Authority in hearings under the PFCRA.

Subpart I—Cooperation With the Office of Special Counsel of the MSPB

§ 516.62 Introduction.

This subpart prescribes procedures for cooperation with the Office of Special Counsel (OSC) of the MSPB, when OSC is investigating alleged prohibited personnel practices or other allegations of improper or illegal conduct within DA activities.

§ 516.63 Responsibilities.

(a) *DA General Counsel.* The DA General Counsel will: (1) Provide overall guidance on all issues concerning cooperation with OSC, including the investigation of alleged prohibited personnel practices and allegations of improper or illegal conduct.

(2) Review for adequacy and legal sufficiency each OSC report of investigation that must be personally reviewed by the Secretary of the Army.

(3) Ensure compliance with the Civil Service Reform Act of 1978 by obtaining a suitable investigation of allegations of improper or illegal conduct received from OSC. This includes compliance with time limits for reporting results of the investigation and personal review of the report by the Secretary of the Army when required.

(4) Forward to the DOD Inspector General (IG) copies of each allegation of improper or illegal conduct referred to DA by OSC.

(5) Delegate to The Judge Advocate General (TJAG) the authority to act on behalf of the DA General Counsel in all OSC investigations of prohibited personnel practices.

(b) *Chief, Labor and Civilian Personnel Law Office.* The Chief, Labor and Civilian Personnel Law Office, OTJAG (DAJA–LC) will: (1) Act for TJAG and shall be the Senior Management Official in cooperating with OSC. As Senior Management Official, the Chief, DAJA–LC, through TJAG, will be responsible to the DA General Counsel for administration of the policies and procedures contained in this chapter.

(2) Promptly inform the DA General Counsel of any OSC investigation and consult with the DA General Counsel on any legal or policy issue arising from an OSC investigation.

(3) Serve as the HQDA point of contact in providing assistance to OSC.

(4) Act as DA attorney-of-record in administrative matters before the MSPB which arise from an OSC investigation. As DA attorney-of-record, the Chief, DAJA–LC will file necessary pleadings and make necessary appearances before the MSPB to represent DA interests.

(5) Monitor ongoing OSC investigations within DA.

(6) Ensure that appropriate DA personnel are fully apprised of their rights, duties and the nature and basis for an OSC investigation.

(7) Review and prepare recommendations to the General Counsel concerning any OSC recommended corrective action referred to DA. Such review and recommendations will address whether disciplinary action should be taken against DA civilian employees or military members, and whether the information warrants referral to appropriate authorities for corrective and disciplinary action.

(8) Seek OSC approval of DA proposed disciplinary action against an employee for an alleged prohibited personnel practice or other misconduct which is the subject of or related to any OSC investigation.

(9) Review and prepare recommendations for DA General Counsel concerning requests for counsel, to include identifying available DA attorneys to act as individual representatives. Upon approval of DA General Counsel, detail DA civilian and military attorneys, to include attorneys from the Army Materiel Command and the Corps of Engineers, to represent individual military members or employees.

(10) Determine, to the extent practicable, whether an investigation is being or has been conducted which duplicates, in whole or in part, a proposed or incomplete OSC investigation, and convey that information to the OSC whenever it might avoid redundant investigative efforts.

(11) Provide guidance and assistance to activity Labor Counselors in fulfilling their duties as Liaison Officers.

(c) *Activity Labor Counselor.* The activity Labor Counselor will: (1) Act as Liaison Officer for OSC investigations arising within the command, activity or installation serviced by the Labor Counselor's client Civilian Personnel Office.

(2) Promptly inform the Chief, DAJA–LC of any OSC inquiry or investigation.

(3) Act as the legal representative of the command, activity, or installation.

(4) Assist the OSC investigator with administrative matters related to the investigation, such as requests for witnesses and documents.

(5) Process all OSC requests for documents.

(6) Make appropriate arrangements for OSC requests to interview civilian employees and military members.

(7) Ensure that personnel involved are advised of the nature and basis for an OSC investigation, the authority of the OSC, and their rights and duties.

(8) Consult with the Chief, DAJA–LC on policy and legal issues arising from the OSC investigation.

(9) Keep the Chief, DAJA–LC informed of the status of the OSC investigation.

§ 516.64 Policy.

(a) It is DA policy that: (1) Civilian personnel actions taken by management officials, civilian and military, will conform to laws and regulations implementing established merit system principles, and be free of any prohibited personnel practices.

(2) Management officials shall take vigorous corrective action when prohibited personnel practices occur. Disciplinary measures under AR 690–700, chapter 751, may be initiated after consultation and coordination with appropriate civilian personnel offices.

(b) DA activities will cooperate with OSC by: (1) Promoting merit system principles in civilian employment programs within DA.

(2) Investigating and reporting allegations of improper or illegal conduct forwarded to the activity by HQDA.

(3) Facilitating orderly investigations by the OSC of alleged prohibited personnel practices and other matters assigned for investigation to the OSC, such as violations of the Freedom of Information Act or Hatch Act.

§ 516.65 Procedures

(a) *Witnesses and DA provided counsel.* (1) DA military and civilian managers, supervisors, and employees who are requested by OSC for an interview will be made available in accordance with arrangements the Labor Counselor shall establish. Requests for the testimony of IGs will be coordinated with the DA IG Legal Office, DAIG–ZXL, AUTOVON 227–9734 or Commercial (202) 697–9734.

(2) The Labor Counselor shall ensure that witnesses are aware of their obligation to answer OSC questions, their potential to be considered "suspects" in OSC investigations, and their right to the assistance of counsel during interviews with OSC representatives. If the requested witness asks for the assistance of counsel, a DA attorney will be made available for that purpose. Counsel assigned under this authority will provide limited legal advice as outlined in Appendix I, paragraph I–1a.

(3) When a DA witness requests that counsel be present during the interview, the Labor Counselor will arrange for individual counsel from local assets. If local assets are not sufficient, assistance may be requested from other DOD activities in the area or from HQDA, DAJA–LC. DA attorneys tasked to assist one or more witnesses individually will not be tasked to represent the DA activity concerned.

(4) The Labor Counselor, as the legal representative of the activity, is precluded from assisting or representing individual witnesses during OSC interviews.

(b) *"Accused" or "Suspected" employees.* (1) If the OSC identifies a DA civilian employee as an "accused" or "suspected" employee, or if the Labor Counselor concludes that an employee is a "suspect," the Labor Counselor will inform the employee. The Labor Counselor also will advise the employee of the availability of counsel for representation upon approval by DA General Counsel.

(2) If the "suspected" employee desires legal representation by DA, he or she must request counsel by submitting a written request through DAJA–LC to DA General Counsel. The contents of the request will conform to the guidance contained in Appendix I, paragraph I–2.

(3) During the investigation but prior to DA General Counsel approval of the request for counsel, an "Accused" or "Suspected" employee shall be provided the assistance of counsel at interviews in the same manner as any other OSC requested witness.

(4) If the DA General Counsel approves the request for counsel, the Chief, DAJA–LC will assign a DA attorney to represent the employee. This assignment may be made telephonically but will be confirmed in writing. The Chief, DAJA–LC will make appropriate coordination with MACOM SJAs and command counsel to confirm availability of the attorney.

(5) An attorney assigned by DA may represent the employee in any proceeding initiated by OSC before the MSPB. However, counsel provided by DA may not represent the employee in any proceeding initiated by DA, in any appeal from a final decision by the MSPB, or in any collateral proceeding before any forum other than the MSPB.

(c) *Military members.* OSC may not bring a disciplinary action before the MSPB against a military member. Accordingly, DA counsel will not be required to represent the military member in any MSPB disciplinary proceeding. However, counsel may represent the member during the OSC investigation with the understanding that the evidence obtained by OSC may be referred to the member's command for possible disciplinary action under the UCMJ or appropriate regulations. If DA initiates action against the military member for misconduct disclosed in the OSC investigation, the member will obtain counsel as provided under the UCMJ or relevant regulations.

(d) *Records.* (1) OSC requests for records must be in writing. The Labor Counselor will assist OSC representatives in identifying the custodian of specific records sought during the inquiry.

(2) Generally, requested records should be furnished to OSC representatives if such records would be released under AR 340–17 or AR 340–21.

to other government agencies in the normal course of official business. Records constituting attorney work product should not be released without approval of the Chief, DAJA–LC. IG records will not be released without the approval of The Inspector General (AR 20–1, paragraph 1–30). The Labor Counselor should seek guidance from the Chief, DAJA–LC if there is any doubt concerning the release of records.

(3) If after completion of the OSC investigation, the OSC files a complaint against DA or a DA employee, release of records and other information shall be accomplished pursuant to Merit Systems Protection Board (MSPB) rules of discovery (5 CFR part 1201, subpart B).

(e) *Funding.* The command, activity, or installation within which the allegations of misconduct arose will provide funding for travel, per diem and other necessary expenses related to the OSC investigation. These expenses may include appropriate funding for witnesses, counsel for assistance at interviews, and DA General Counsel approved counsel for representation.

§ 516.66 Guidance.

Labor Counselors may seek guidance on questions arising from implementation of this chapter by calling the Chief, DAJA–LC, AUTOVON 225–9476/4369 or Commercial (202) 695–9476/4369.

Subpart J—Soldiers Summoned to Serve on State and Local Juries

§ 516.67 General.

This subpart implements 10 U.S.C. 982 and DoD Directive 5525.8. It establishes Army policy concerning soldiers on active duty who are summoned to serve on state and local juries.

§ 516.68 Policy.

(a) Active duty soldiers are permitted to fulfill their civic responsibilities to the full extent consistent with their military duties. Serving on a state or local jury is one such civic responsibility.

(b) The following active duty soldiers are exempt from complying with summons to serve on state and local juries.

(1) General officers.

(2) Commanders.

(3) Active duty soldiers stationed outside the United States, District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

(4) Active duty soldiers in a training status.

(5) Active duty soldiers assigned to the operating forces.

(c) Other active duty soldiers may be exempt from complying with summons to serve on state or local juries, if it is determined that compliance with such summons would either:

(1) Interfere unreasonably with the performance of the soldier's military duties; or,

(2) Adversely affect the readiness of the unit, command, or activity to which the soldier is assigned.

§ 516.69 Exemption determination authority.

(a) The commander exercising special court-martial convening authority (SPCMCA) over a unit has the authority to determine whether a soldier of that unit, who has been served with a summons, is exempt from serving on a state or local jury unless that authority has been limited or withheld in accordance with paragraphs (b) and (c) of this section. This authority may not be delegated to a subordinate commander who does not exercise SPCMCA.

(b) A commander superior to a commander exercising SPCMCA, who also exercises SPCMCA or general court-martial convening authority (GCMCA) over a unit, may limit or withhold the exemption determination authority of subordinate commanders.

(c) A commander exercising GCMCA, who orders a unit or soldier assigned to one command to be attached or detailed to another command for disciplinary purposes (e.g., "for administration" or "for administration of military justice"), may reserve exemption determination authority to the commander exercising SPCMCA in the chain of command to which the unit or soldier is assigned rather than the chain of command to which the unit or soldier is attached or detailed.

§ 516.70 Procedures to determine exemption.

(a) Active duty soldiers, who have been served with a summons to serve on a state or local jury, will promptly advise their unit commander and provide copies of all pertinent documents.

(b) Unit commanders will evaluate the summons considering both the individual soldier's duties and the unit's mission requirements. Coordination with the servicing judge advocate or legal adviser, and with the appropriate state or local official may be necessary to determine the impact, if any, on the soldier's duties or on unit readiness.

(1) If the soldier is not exempt under § 516.68 (b) or (c), the commander will process the soldier for permissive TDY in accordance with AR 630–5, Leave, Passes, Permissive Temporary Duty, and Public Holidays.

(2) If the soldier should be exempt under § 516.68 (b) or (c), the commander will forward the summons and any related documentation, with recommendations, through the chain of command, to the commander with exemption determination authority over the soldier concerned.

(c) The commander with exemption determination authority over the soldier concerned will determine whether the soldier is exempt from complying with the summons, under the criteria of § 516.68 (b) or (c). His or her determination will be conclusive.

(d) The exemption determination authority will notify responsible state or local officials whenever a soldier summoned for jury duty is exempt under § 516.68 (b) or (c). The notification will cite 10 U.S.C. 982 as the authority for the exemption.

§ 516.71 Status, fees, and expenses.

(a) Soldiers who are required to comply with summons to serve to state or local juries will be put on permissive TDY under the provisions of AR 630–5.

(b) Jury fees accruing to soldiers for complying with the summons to serve on state and local juries are payable to the U.S. Treasury. Commands, therefore, should establish procedures with local authorities and their servicing finance and accounting activity to ensure that such jury fees are deposited in the U.S. Treasury. Soldiers, however, may keep any reimbursement from the state or local authority for expenses incurred in the performance of jury duty. Such reimbursements include transportation, meal, and parking expenses.

Subpart K—Requests for Indemnification

§ 516.72 Money judgments, verdicts, or awards rendered against indemnify employees or soldiers.

DA cannot generally indemnify employees or soldiers for money judgments, verdicts, or awards rendered against them in their individual capacities. DA may, however, in extraordinary circumstances, consider a request for indemnification from DA personnel if conduct within the scope of official duties results in personal liability, and indemnification is in the best interest of the United States. Accordingly, when indemnification is not otherwise authorized by law, an employee or soldier subject to a final judgment, verdict, or award may submit a written request for indemnification to HQDA (DAJA–LT). The request must include:

(a) The judgment, verdict, or award subject to the request, appropriate allied

papers describing the circumstances of the action;

(b) An explanation of how the conduct upon which the judgment, verdict, or award is based was within the scope of the requester's official duties;

(c) A statement of how indemnification is in the interest of the United States;

(d) A statement as to whether the requester has any insurance or other source of indemnification; and,

(e) A statement signed by the requester expressing his or her understanding that the acceptance of a request for indemnification for processing by DA does not constitute an acceptance of any obligation to make such a payment, and that any such payment that might be made is a permissive action taken to further the interests of the United States.

§ 516.73 Request for indemnification.

The request for indemnification must be accompanied by a recommendation from the requester's supervisor. The supervisor must specifically address statements by the requester made in accordance with paragraphs (b) and (c) of this section.

§ 516.74 Legal authority for indemnification.

Indemnification pursuant to this procedure may not be made unless there is legal authority for it and appropriated funds are available.

§ 516.75 Requests.

Requests submitted in compliance with these procedures will be forwarded with a recommendation by the Chief, Litigation Division through the Army General Counsel to the Secretary of the Army or his designee for decision. The Chief, Litigation Division, is responsible for appropriate consultation with the Department of Justice.

Appendix A to Part 516—References

Publications

AR 27–20
Claims. (Cited in §§ 516.1(b)(4), 516.4(c), and 516.12(a)(7))
AR 27–60
Patents, Inventions, and Copyrights. (Cited in § 516.11(e)(1)(i))
AR 37–60
Pricing for Material and Services. (Cited in § 516.36(c))
AR 37–103
Finance and Accounting for Installations: Disbursing Operations. (Cited in §§ 516.11(e)(1)(i)) and 516.12(a)(1))
AR 60–20
Operating Policies. (Cited in § 516.11(f)(2)(i))
AR 210–47
State and Local Taxation of Lessee's Interest in Wherry Act Housing (Title VIII of the National Housing Act). (Cited in § 516.11(f)(2)(ii))
AR 215–1
Administration of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in § 516.11(f)(2)(v), (vi), and (3))
AR 215–2
The Management and Operation of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in § 516.11(f)(2)(d))
AR 25–30–1
Publications, Blank Forms, and Printing Management. (Cited in § 516.11(e)(1)(ii))
AR 340–17
Release of Information and Records From Army Files. (Cited in §§ 516.12(b)(5)(ii)(5), 516.33, and 516.36(b)(2))
AR 340–21
The Army Privacy Program. (Cited in § 516.33))
AR 380–5
Department of the Army Information Security Program. (Cited in § 516.38(b)(5))
AR 405–25
Annexation. (Cited in § 516.11(f)(4))
AR 630–5
Leaves, Passes, Permissive Temporary Duty, and Public Holidays. (Cited in § 516.33(a))

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand the regulation.

AR 20–1
Inspector General Activities and Procedures
AR 27–1
Judge Advocate Legal Service
AR 27–3
Legal Assistance
AR 27–10
Military Justice
AR 27–50
Status of Forces Policies, Procedures, and Information
AR 37–104–3
Military Pay and Allowances Procedures
AR 37–105
Finance and Accounting for Installations: Civilian Pay Procedures
AR 55–19
Marine Casualties
AR 190–29
Misdemeanors and Uniform Violation Notices Referred to U.S. Magistrates or District Courts
AR 190–40
Serious Incident Report
AR 210–50
Family Housing Management
AR 335–15
Management Information Control System
AR 600–40
Apprehension, Restraint, and Release to Civil Authorities
AR 600–50
Standards of Conduct for Department of the Army Personnel
AR 690–700
Personnel Relations and Services

Prescribed Form

DA Form 4
Department of the Army Certification for Authentication of Records (Prescribed in § 516.36))

Referenced Forms

DA Form 2631–R
Medical Care: Third Party Liability Notification
DA Form 3154
MSA Invoice and Receipt

Appendix B to Part 516—Mailing Addresses for Matters Concerning Litigation

B–1 Office of The Judge Advocate General

(a) Contract Law Division.

HQDA(DAJA–KL), Wash DC 20310–2208.

(b) Litigation Division.

HQDA(DAJA–LT), Wash DC 20310–2210.

(1) Civilian Personnel Branch.

HQDA(DAJA–LTC), Wash DC 20310–2210.

(2) General Litigation Branch.

HQDA(DAJA–LTG), Wash DC 20310–2210.

(3) Military Personnel Branch.

HQDA(DAJA–LTM), Wash DC 20310–2210.

(4) Tort Branch.

HQDA(DAJA–LTT), Wash DC 20310–2210.

(c) Personnel, Plans, and Training Office.

HQDA(DAJA–PT), Wash DC 20310–2206.

(d) Procurement Fraud Division.

HQDA(DAJA–PF), Wash DC 20310–2217.

B–2—Field operating agencies, OTJAG

(a) U.S. Army Claims Service.

Commander, U.S. Army Claims Service, Attn: JACS–PC, Fort George G. Meade, MD 20755–5360.

(b) U.S. Army Legal Services Agency.

(1) Patents, Copyrights, and Trademarks Division.

HQDA(JALS–PC), Nassif Building, Falls Church, VA 22041–5013.

(2) Regulatory Law Office.

HQDA(JALS–RL), Nassif Building, Falls Church, VA 22041–5013.

(3) U.S. Army Trial Defense Service.

HQDA(JALS–TD), Nassif Building, Falls Church, VA 22041–5013.

(4) Procurement Fraud Division.

HQDA(DAJA–PF), Wash DC 20310–2210.

(5) Environmental Law Division.

HQDA(DAJA–EL), Wash DC 20310–2210.

Appendix C to Part 516—Habeas Corpus and Injunctive Relief

C–1 General

Pending court-martial and administrative proceedings involving Army personnel can be blocked by temporary restraining orders and preliminary injunctions. Writs of habeas corpus may be sought in pending and completed proceedings to challenge a soldier's continued custody or retention in the

Army. Because these actions pose a threat to the order/conduct of military functions and because their resolution is accomplished in a short time, immediate and decisive action must be taken in these cases.

C–2 Notification of TJAG and the U.S. Attorney

(a) HQDA(DAJA–LT) will be notified by telephone or by the fastest alternative means upon the filing of a motion for temporary restraining order or preliminary injunction or petition for writ of habeas corpus, or when notice is received that such a pleading is about to be filed.

(b) If HQDA(DAJA–LT) cannot be reached or if time does not permit, the JA notified of the filing will notify the responsible U.S. Attorney and render necessary assistance. HQDA(DAJA–LT) will be notified as soon thereafter as possible.

C–3 Preparation of Documentary Evidence and Pleadings

(a) All documentary evidence supporting the challenged action should be assembled immediately upon notification that papers have been filed or are about to be filed in court. Assembly of these documents should not await notification of HQDA(DAJA–LT) or the U.S. Attorney. Docuements required to be certified should be prepared using a DA Form 4. (See § 516.36(b))

(b) Upon the filing of a petition for writ of habeas corpus, the court will either issue the writ or order the respondent to show cause why it should not be granted. If a writ or order to show cause is issued, a return and answer will be prepared unless otherwise directed by HQDA(DAJA–LT). Figure C–1 shows an example of the format of a return and answer. Other formats consistent with local practice may be used. A memorandum of points and authorities will accompany the return and answer. In the preparation of the memorandum and return and answer particular attention should be paid to whether appellate or administrative remedies have been exhausted and whether the respondent is within the district and has custody of the petitioner.

(c) On a motion for a temporary restraining order or for a preliminary injunction, a memorandum of points and authorities in opposition to the motion will be prepared unless otherwise directed by HQDA(DAJA–LT). Preparation of the memorandum does not negate the responsibility to prepare an investigative report per § 516.12. In the preparation of the memorandum, particular attention will be paid to:

(1) The likelihood of success the plaintiff can expect on the merits.

(2) The possibility that the plaintiff will be irreparably harmed if the motion is not granted.

(3) Whether the injunctive relief will harm other parties in interest.

(4) The public interest.

(5) Whether appropriate administrative remedies, such as Article 138, Uniform Code of Military Justice UCMJ, or the Army Board for Correction of Military Records or Army Discharge Review Board under 10 U.S.C. 1552 and 1553, have been exhausted.

C–4 Writs or Orders Issued by State or Foreign Courts

(a) No State court, after being judicially informed that a petitioner is in custody under the authority of the United States, has any right to interfere with that custody or to require that the petitioner be brought before the State court. A deserter, apprehended by any civil officer having authority to apprehend offenders under the laws of the United States or of any State, district, territory, or possession of the United States, is in custody by authority of the United States. A writ of habeas corpus issued by a State court will not be obeyed. Custody of the petitioner will be retained. If a writ or an order to show cause should be issued by a State court, the notification procedure in paragraph C–2 of this Appendix will be followed and, unless otherwise instructed by HQDA(DAJA–LTM), a return similar to that contained in Figure C–2 of this Appendix, will be filed with the court.

(b) A foreign court cannot inquire into the legality of restraint upon any person held by U.S. military authority, regardless of any superior right to custody that the foreign government may claim by treaty. Any process in the nature of a writ of habeas corpus issued by a foreign court will not be obeyed. Issuance of the process concerned will be reported to the commander of the U.S. forces within whose command the person restrained is located and to HQDA(DAJA–LT) by the fastest means possible.

Figure C–1 to Appendix C—Format for Return and Answer to Writ or Order Concerning Habeas Corpus

Case No. (Number)

In the United States District Court for the (District) (Petitioner's Name), Petitioner, v. (Respondent's Name), Respondent.

Respondent's Return to (Order to Show Cause) (Writ of Habeas Corpus) and Answer to Petition for Habeas Corpus.

Respondent (respondent's name), on whom has been served (an order to show cause why a writ of habeas corpus should not issue on behalf of (petitioner's name)) (a writ of habeas corpus for the production of (petitioner's name)) by his attorney (respondent's attorney name), makes return to the (order) (writ) and an answer to the petition and respectfully shows to the court that the petitioner (petitioner's name), is held by authority of the United States pursuant to (a warrant of attachment, issued under Article 46, Uniform Code of Military Justice, 10 U.S.C. 846) * (the sentence of a general court-martial) * * (Whatever ground upon which the petitioner's custody or retention in the service is premised) under the following circumstances:

(State in separate numbered paragraphs the specific facts pertaining to petitioner's custody or retention, making reference to whatever exhibits evidence the underlying proceeding.)

For his (her) answer to petitioner's petition for writ of habeas corpus, respondent admits, denies and avers as follows:

(Answer the specific allegations of the petition in separate numbered paragraphs, corresponding to those of the petition, one of the following responses may be appropriate in response to specific allegations:

Admits.

Admits and avers that (state facts).

Denies.

Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments in the paragraph.

The paragraph contains conclusions of law and not averments of fact to which an answer is required, but insofar as an answer may be deemed to be required, denies.)

In further return to the (order to show cause) (writ of habeas corpus), respondent submits herewith as Exhibit A, (list whatever additional exhibits are called for by the circumstances), and a supporting memorandum of points and authorities.

(In obedience to the writ of habeas corpus, respondent herewith produces the petitioner and for the reasons set forth respectfully prays that the court discharge the writ it has issued.) (or) (wherefore, respondent respectfully prays that the court discharge the order to show cause and for the reasons set forth dismiss the petition for writ of habeas corpus.)

(Name of U.S. Attorney) United States Attorney

(Name of Assistant U.S. Attorney) Assistant United States Attorney

Figure C–2 to Appendix C—Sample Language for Return to Writ on Order of State Court

(Make return as in Figure C–1, substituting the name of the State court and deleting reference to the supporting memorandum and substituting for the final paragraph the following:)

Respondent further states that this court is without jurisdiction to proceed in this action and he respectfully pray as that this court discharge the (writ of habeas corpus) (order to show cause and dismiss the petition for writ of habeas corpus) in accordance with the decision of the *United States Supreme Court in Ableman* v. *Booth*, 62 U.S. (21 How.) 506, 523–524 and Tarble's Case, 80 U.S. (13 Wall.)

Appendix D to Part 516—Department of Defense Directive 5405.2

(See 32 CFR part 97.)

Appendix E to Part 516—Department of Defense Directive 7050.5

June 28, 1985
Number 7050.5
IG, DoD

* Appropriate exhibits that should be incorporated include the original subpoena and proof of service, a copy of the convening order, a copy of the charge sheet, a declaration of the officer issuing the warrant (see 28 U.S.C. 1746) concerning the materiality of the witness, that fees and mileage have been tendered and that the witness has failed to appear without excuse.

** Appropriate exhibits include the record of trial or, in the case of a pending trial, the charge sheet and allied papers.

Subject: Coordination of Remedies for Fraud and Corruption Related to Procurement Activities

References:

(a) Public Law 97291, "The Victim and Witness Protection Act of 1982," October 12, 1982.

(b) DoD Federal Acquisition Regulation Supplement, 48 CFR subpart 204.6–Contract Reporting.

(c) DoD Instruction 4105.61, "DoD Procurement Coding Manual," May 4, 1973.

(d) DoD 4105.61M, "Procurement Coding Manual (Vols. I and II)," October 1982, authorized by reference (c), above.

A. Purpose

This Directive establishes policies and procedures, and assigns responsibilities regarding the coordination of criminal, civil, administrative, and contractual remedies stemming from investigation of fraud or corruption related to procurement activities. More effective and timely communication of information developed during such investigations will enable the Department of Defense to resolve them effectively by taking the most appropriate of the available measures.

B. Applicability

This Directive applies to the Office of the Secretary of Defense (OSD) and its field activities; the Office of the Inspector General, Department of Defense (OIG, DoD); the Military Departments; and the Defense Agencies (hereafter referred to collectively as "DoD Components").

C. Definitions

1. DoD Criminal Investigative Organizations. Refers to the U.S. Army Criminal Investigation Command, the Naval Investigative Service, the U.S. Air Force Office of Special Investigations, and the Defense Criminal Investigative Service, OIG, DoD.

2. Significant. As used in this Directive, shall mean all fraud cases involving an alleged loss of $50,000 or more and all corruption cases related to procurement that involved bribery, gratuities, or conflicts of interest.

D. Policy

It is DoD policy that:

1. Each of the DoD Components shall monitor, from its inception, all significant investigations of fraud or corruption related to procurement activities affecting its organizations, for the purpose of ensuring that all possible criminal, civil, administrative, and contractual remedies in such cases are identified to cognizant procurement and command officials and that appropriate remedies are pursued in a timely manner. This process shall include appropriate coordination with all other affected DoD Components.

2. All investigations of fraud or corruption related to procurement activities shall be reviewed to determine and implement the appropriate contractual and administrative actions that are necessary to recover funds lost through fraud or corruption and to ensure the integrity of DoD programs and operations.

3. Appropriate civil, contractual, and administrative actions, including those set forth below, shall be taken in a timely manner. During an investigation and before prosecution or litigation, and when based in whole or in part on evidence developed during an investigation, such actions shall be taken with the advance knowledge of the responsible DoD criminal investigative organization and, when necessary, the appropriate legal counsel in the Department of Defense and the Department of Justice (DoJ). When appropriate, such actions shall be taken before final resolution of the criminal or civil case.

E. Responsibilities

1. The Heads of DoD Components shall:

a. Establish a centralized organization (hereafter referred to as "the centralized organization") to monitor and ensure the coordination of criminal, civil, administrative, and contractual remedies for each significant investigation of fraud or corruption related to procurement activities affecting the DoD Component.

b. Establish procedures requiring the centralized organization to discuss regularly with the assigned DoD criminal investigative organization(s) such issues as the current status of significant investigations and their coordination with prosecutive authorities.

c. Establish procedures requiring that all coordination involving the DoD, during the pendency of a criminal investigation, is accomplished by or with the advance knowledge of the appropriate DoD criminal investigative organization(s).

d. Establish procedures to ensure appropriate coordination of actions between the centralized organizations of any DoD Components affected by a significant investigation of fraud or corruption related to procurement activities.

e. Establish procedures to ensure that all proper and effective civil, administrative, and contractual remedies available to the Department of Defense are, when found applicable and appropriate, considered and undertaken promptly by the necessary DoD officials (e.g., commanders, program officials, and contracting officers). This includes initiation of any suspension and debarment action within 30 days of an indictment or conviction.

f. Establish procedures to ensure that a specific comprehensive remedies plan is developed for each significant investigation involving fraud or corruption related to procurement activities. These procedures shall include the participation of the appropriate DoD criminal investigative organization in the development of the plan.

g. Establish procedures to ensure that in those significant investigations of fraud or corruption related to procurement activities when adverse impact on a DoD mission can be determined, such adverse impact is identified and documented by the centralized organization. This information is to be used by the centralized organization of the DoD Component concerned in development of the remedies plan required in paragraph E.1.f., above, and shall be furnished to prosecutors as stated in paragraph E.2.e., below. Some examples of adverse impact on a DoD mission are: endangerment of personnel or property; monetary loss; denigration of program or personnel integrity; compromise of the procurement process; and reduction or loss of mission readiness.

h. Ensure training materials are developed regarding fraud and corruption in the procurement process, and that all procurement and procurement-related training includes a period of such instruction appropriate to the duration and nature of the training.

2. The Secretaries of the Military Departments and the Inspector General, Department of Defense, or their designees, shall establish procedures that ensure that their respective criminal investigative organizations will:

a. Notify, in writing, on a timely basis, the centralized organization for the affected DoD Component of the initiation of all significant investigations involving fraud or corruption that are related to procurement activities. Initial notification shall include the following elements: case title; case control number; investigative agency and office of primary responsibility; date opened; predication; and suspected offense(s).

b. Notify, on a timely basis, the Defense Investigative Service (DIS) of any investigations that develop evidence that would impact on DoD-cleared industrial facilities or personnel.

c. Discuss regularly with the centralized organization such issues as the current status of significant investigations and their coordination with prosecutive authorities. If the DoD criminal investigative organization has prepared any documents summarizing the current status of the investigation, such documents shall be provided to the centralized organization. Completed reports of significant investigations also should be provided to the centralized organization.

d. Provide to the appropriate procurement officials, commanders, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption related to procurement activities. Such information shall be provided in a timely manner to enable the suspension and debarment authority to initiate suspension and debarment action within 30 days of an indictment of conviction.

e. Provide to prosecutive authorities, on a timely basis, information regarding any adverse impact on a DoD mission, that is gathered under paragraph E.1.g., above, for the purpose of enhancing the prosecutability of a case. Such information also should be used in preparing a victim impact statement for use in sentencing proceedings as provided for in Public Law 97–291 (reference (a)).

f. Gather, at the earliest practical point in the investigation, without reliance on grand jury subpoenas whenever possible, relevant information concerning responsible individuals, the organizational structure, finances, and contract history of DoD contractors under investigation for fraud or corruption related to procurement activities, to facilitate the criminal investigation as well as any civil, administrative, or contractual actions or remedies that may be taken. Some available sources of such information are listed below.

g. Provide timely notice to other cognizant DoD criminal investigative organizations of evidence of fraud by a contractor, subcontractor, or employees of either, on current or past contracts with, or affecting, other DoD Components.

h. Ascertain the impact upon any ongoing investigation or prosecution of civil, contractual, and administrative actions being considered and advise the appropriate centralized organization of any adverse impact.

3. The Inspector General, Department of Defense, shall:

a. Develop training materials relating to fraud and corruption in procurement related activities which shall be utilized in all procurement related training in conjunction with training materials developed by the DoD Components (see paragraph E.1.h., above).

b. Establish procedures for providing to the DoD criminal investigative organizations, through the Office of the Assistant Inspector General for Auditing (OAIGAUD), reports of data contained in the Individual Procurement Action Report (DD Form 350) System.

F. Procedures

Transmissions of information by DoD criminal investigative organizations required by subsection E.2., above, shall be made as expeditiously as possible, consistent with efforts not to compromise any ongoing criminal investigation. The transmission of the information may be delayed when, in the judgment of the head of the DoD criminal investigative organization, failure to delay would compromise the success of any investigation or prosecution. The prosecutive authorities dealing with the investigation shall be consulted, when appropriate, in making such determinations.

G. Effective Date and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the Inspector General, Department of Defense, within 120 days.

William H. Taft IV,

Deputy Secretary of Defense.

June 28, 1985

7050.5

Civil, Contractual, and Administrative Actions That Can Be Taken in Response to Evidence of Procurement Fraud

1. Civil

a. Statutory

(1) False Claims Act (31 U.S.C. 3729 et seq.)

(2) Anti-Kickback Act (41 U.S.C. 51 et seq.)

(3) Voiding Contracts (18 U.S.C. 218)

(4) Truth in Negotiations Act (10 U.S.C. 2306(f))

(5) Fraudulent Claims Contract Disputes Act (41 U.S.C. 604)

b. Nonstatutory

(1) Breach of contract

(2) Breach of warranty

(3) Money paid under mistake of fact

(4) Unjust enrichment

(5) Fraud/Deceit

(6) Conversion

(7) Recision/Cancellation

(8) Reformation

(9) Enforcement of performance bond/guarantee agreement

2. Contractual

a. Termination of contract for default

b. Termination of contract for convenience of Government

c. Termination for default and exemplary damages under the gratuities clause

d. Recision of contract

e. Contract warranties

f. Withholding of payments to contractor

g. Offset of payments due to contractor from other contracts

h. Price reduction

i. Correction of defects (or cost of correction)

j. Refusal to accept nonconforming goods

k. Revocation of acceptance

l. Denial of claims submitted by contractors

m. Disallowance of contract costs

n. Removal of the contractor from automated solicitation or payment system

3. Administrative

a. Change in contracting forms and procedures

b. Removal or reassignment of Government personnel

c. Review of contract administration and payment controls

d. Revocation of warrant contracting officer

e. Suspension of contractor and contractor employees

f. Debarment of contractor and contractor employees

g. Revocation of facility security clearances

h. Nonaward of contract based upon a finding of contractor nonresponsibility

i. Voluntary refunds

Jun 28, 85

7050.5

Sources of Information Relating to Government Contractors

Type of Information: 1. Location, dollar value, type, and number of current contracts with the Department of Defense.

Possible Source:

a. DD Form 350 Report.1

b. Defense Logistics Agency's (DLA) Contract Administration Report (CAR Report) on contracts DLA administers.

Type of Information: 2. Financial status of corporation, history of corporation, owners, and officers.

Possible Source:

a. Dun and Bradstreet Reports.

b. Corporate filings with local secretaries of the State, or corporate recorders.

c. Securities and Exchange Commission (public corporations).

d. Small Business Administration (SBA) (small businesses).

e. General Accounting Office (bid protests, and contractors indebted to the Government).

f. Armed Services Board of Contract Appeals (ASBCA) or court litigation.

g. List of Contractors Indebted to the United States (maintained, published and distributed by the U.S. Army Finance and Accounting Center, Indianapolis, Indiana 46249)

Type of Information: 3. Security clearance background information on facility and officers.

Possible Source: Defense Investigative Service.

Type of Information: 4. Performance history of contractor.

Possible Source:

a. Local contracting officers.

b. Defense Contract Administration Service preaward surveys.

c. SBA Certificate of Competency records.

Type of Information: 5. Name, location, offense alleged, and previous investigative efforts involving DLA-awarded or DLA-administered contracts.

Possible Source: DLA Automated Criminal Case Management System. (Available through field offices of the DLA Counsel's office.)

Type of Information: 6. Bid protests, litigation, and bankruptcy involving DLA-awarded or DLA-administered contracts.

Possible Source: Field offices of the DLA Counsel's office.

Note

1. A determination as to the contract history of any DoD contractor with contracts in excess of $25,000 annually can be made through a review of the Individual Procurement Action Report (DD Form 350) System as prescribed by 48 CFR subpart 204.6 of the DoD FAR Supplement (reference (b)), DoD Instruction 4105.61 (reference (c)), and DoD 4105.61M (reference (d)).

Appendix F to Part 516—Sample Installation PFA Program Standing Operating Procedures

F–1. Purpose

To establish standardized procedures for a procurement fraud program.

F–2. Policy

(a) Handling procurement fraud requires a multidisciplinary approach. Procurement fraud is a crime affecting the installation. Installation personnel act as a team to support the command in handling fraud cases.

(b) (Suggest for installations with large procurement activities). Procurement fraud coordinating committees serve as effective vehicles for implementing a fraud abatement program. Such committees should be composed of designated points of contact of each major organization within the installation. Where organizations have designated points of contact with responsibility for fraud matters, communication is enhanced. First, personnel know where to obtain information; inquiries are not shuffled from office to office. Second, it is not necessary to sell people on the importance of the program with every new case; a designated point of contact should be aware of its importance. Third, personnel who work continuously with the procurement fraud program gain the experience to take swift and effective action.

F–3. Scope

(a) The PFA shall be responsible for management, oversight, and operation of the procurement fraud program. The PFA has ultimate responsibility and decision-making authority on how to handle a procurement fraud case at the installation level. PFAs should have a working knowledge of

procurement law, criminal law, civil litigation, and familiarity with the relationship between various government agencies in the acquisition and white collar crime areas. Formal training in these areas is encouraged. PFAs should avail themselves of technical in-house training.

(b) Cases of procurement fraud shall be handled expeditiously on all levels; civil, criminal, administrative, and contractual. The PFA shall telephonically advise the MACOM PFI coordinator of significant case developments at the earliest practical opportunity. An effective working relationship is necessary between PFAs and all major organizations, particularly investigators, U.S. Attorneys, and auditors. Memorandums of Understanding may be executed where appropriate between these organizations and PFAs but they must be approved by PFI coordinators.

F–4. PFA Responsibilities

(a) Case management—initiation

(1) Sources of Information cases may arise from the following sources:

(i) Informal

1. Reports from persons or organizations within the command (e.g., procurement/contracting office, product assurance, facility engineering, internal review.)

2. Whistleblowers (either Government or contractor).

(ii) Formal

(1) Reports from investigative agencies, such as the Defense Criminal Investigative Service, USACIDC, or the FBI.

(2) Reports from auditing agencies, such as the Army Auditing Agency, the Defense Contract Audit Agency, or the GAO.

(3) Inquiries from higher headquarters.

(2) Informal source

(i) Information from informal sources should be reduced to writing, either by the source or by the PFA, with as much specificity as possible. At a minimum, that information should include that necessary to prepare a Procurement Flash Report under AR 2740, chapter 8.

(ii) Assess the information provided to determine whether there are any violations of statute, regulation, policy, or contractual obligations.

(iii) If referral to USACIDC due to criminal violations is not warranted, the PFA shall refer the matter to the appropriate command organization for resolution, (e.g., the procuring contracting officer or the IG). The PFA shall document the file outlining the reasons why referral is unwarranted.

(iv) If referral to USACIDC is warrants, the PFA will—

(A) Forward assessment to USACIDC.

(B) Identify appropriate command elements to participate in a Case Management Team.

(C) Assemble the case management team (including the investigative agent) for the purpose of discussing procedures and to determine the validity of the allegations. The case management team may include representatives, as appropriate, from—

Army Audit Agency
Civilian Personal Office
Competition Advocate
Comptroller
U.S. Army Criminal Investigation Command
Defense Contract Audit Agency
Engineering
Faculties Engineer
Inspector General
Internal Review and Control
Procurement and Production
Product Assurance
Provost Marshal
Security
Small Business Administration

(D) Initiate a Procurement Flash Report under AR 27–40, chapter 8, through MACOM to HQDA (DAJAPF).

(3) Formal source

(i) Information from formal sources should be assessed to determine violations of statute, regulations, policy, or contractural publications.

(ii) If criminal investigation is warranted and the matter has not yet been referred, refer the matter to USACIDC. If criminal investigation is unwarranted, refer to paragraph (2)(iii) of this Appendix.

(iii) Assemble case management team as in paragraph (2)(iv)(C) of this Appendix.

(iv) Initiate Procurement Flash Report as in paragraph (2)(iv)(D) of this Appendix.

(b) Case management coordination

(1) Initiate Remedies Plan as required by subpart H.

(2) If appropriate, develop report in accordance with DFARS 48 CFR 209.472 and AFARS 48 CFR 5109.472.

(3) Review cases at least every 30 days.

(4) If appropriate, initiate a civil recovery report. See part H.

(5) Following referral of the matter for civil, criminal, or administration remedies, the PFA shall assist the cognizant organization (DA, DOJ, Assistant U.S. Attorney) in the pursuit of that remedy. This may include preparing pleadings discovery, motion practice, or negotiating settlement agreements. Prior to any contractual or administrative action being taken in a matter where there is a DOJ attorney/Assistant U.S. Attorney assigned, coordination will be accomplished with the MACOM PFI coordinator, DAJAPF, and the DOJ attorney/Assistant U.S. Attorney.

(c) Case management reporting. Duplication of reported information shall be avoided whenever possible. The three primary reports are as follows:

(1) Procurement Flash Reports

(i) Prepare under AR 2740, chapter 8.

(ii) Copies shall be simultaneously transmitted to DAJAPF and the MACOM PFI coordinator.

(2) DFARS 48 CFR 209.472 report suspension/debarment. Consult this paragraph of the DFARS for a list of items required in each report.

(3) AFARS 48 CFR 5109.472 requires as additional information

(i) The name of the investigative agency that investigated either the facts reflected in the report or the report or other aspects of the contractor's dealings with the Government.

(ii) Credit and financial reports on the contracts which are available, such as those produced by Dun and Bradstreet, Inc., to include the Duns number.

(iii) One copy each should be sent simultaneously to HQDA(DAJAPF) and the MACOM PFI coordinator. One copy is to be retained by the PFA and made available to the other command elements as necessary.

(4) Civil recovery report. See § 516.12, for contents of civil recovery report. The PFA will include draft pleadings to assist in the initiation of action. The MACOM PFI coordinator may be contacted for assistance to these matters. PFAs should ensure that the MACOM coordinator is informed of contract related matters which may affect ongoing fraud investigation and/or civil actions to include:

(i) Protest.

(ii) Novations.

(iii) Motion before the ASBCA.

(iv) Claims not yet subject to final decision.

(v) Quality deficiency reports and reports of item deficiency.

F–5. Training and Awareness

(a) Annual training in procurement fraud shall be mandatory for all organizational elements involved in procurement activities. The FPA shall be responsible for oversight of training. The MACOM PFI coordinator must be apprised of all annual training not later than 15 January and annual reports of completed training shall be provided not later than 30 September.

(b) At a minimum, a procurement fraud related article shall be published quarterly in command newspaper/bulletin or similar publication.

(c) Other awareness measures may also be implemented such as fraud awareness posters or distribution of any DOD IG fraud related publications.

Figure F–1 to Appendix F—Sample Format for Magistrate's Court Complaint

UNITED STATES DISTRICT COURT FOR THE (DISTRICT)

Magistrate's Docket No.
(Number)

Case No.
(Number)

UNITED STATES OF AMERICA v.
(Defendant's Name)

COMPLAINT FOR VIOLATION OF (Laws Violated)

Before . . . (name of magistrate) (address of magistrate) . . .

The undersigned complainant being duly sworn states:

That on or about . . . (date) . . . 19 (yr) . . . at / / / (location) . . . in the . . . (name of district) . . .

(NAME OF ACCUSED)

did . . . (here insert essential facts constituting the offense charged) . . . and the complainant further states that he believes that (names of witnesses) . . . are material witnesses in relation to this charge.

(Signature of Complainant)

Sworn to before me, and subscribed in my presence . . . (date) . . . 19 . . . (yr) . . . .

(Name of U.S. Magistrate)
United States Magistrate

Figure F–2 to Appendix F—Sample Format for Consent To Be Tried by Magistrate

UNITED STATES DISTRICT COURT FOR THE (DISTRICT)

Magistrate's Docket No.
(Number)

Case No.
(Number)
UNITED STATES OF AMERICA v.
(Defendant's Name)
CONSENT TO BE TRIED BY UNITED STATES MAGISTRATE

I, . . . (Defendant's Name) . . . charged with . . . (name of offense) . . . a misdemeanor offense against the laws of the United States on a Federal Reservation, in the . . . (division, if any) . . . Division of the (district) appearing before . . . (name of U.S. magistrate) . . . , United States Magistrate, who has fully apprised me of my right to elect to be tried before a judge of the district court which has jurisdiction of the offense, and that I may have a right to trial by jury before such judge, and explained to me the consequences of this consent, do hereby consent to be prosecuted before the magistrate of the charge hereinbefore stated, as authorized by title 18, United States Code, section 3401.

Dated . . . (date) . . . , 19 . . . (yr) . . . .

(Signature of Defendant)
Defendant

(Signature of Witness)
Witness

Appendix G to Part 516—Procurement Fraud Indicators

G–1. During the Identification of the Government's Need for Goods and Services

(a) Need determinations for items currently scheduled for disposal or reprocurement, or which have predetermined reorder levels.
(b) Excessive purchase of "expendables" such as drugs or auto parts.
(c) Inadequate or vague need assessment.
(d) Frequent changes in the need assessment or determination.
(e) Mandatory stock levels and inventory requirements appear excessively high.
(f) Items appear to be unnecessarily declared excess or sold as surplus, while same items are being reprocured.
(g) It appears that an item or service is being purchased more as a result of aggressive marketing efforts rather than in response to a valid requirement.
(h) Need determination appears to be unnecessarily tailored in ways that can only be met by certain contractors.
(i) Items and services are continually obtained from the same source due to an unwarranted lack of effort to develop second sources.

G–2. During the Development of the Statement of Work and Specifications

(a) During the Development of the statements of work and specifications appear to be intentionally written to fit the products or capabilities of a single contractor.
(b) Use of statements of work, specifications, or sole source justifications developed by or in consultation with a preferred contractor.
(c) Information concerning requirements and pending contracts is released only to preferred contractors.
(d) Allowing companies and industry personnel who participated in the preparation of bid packages to perform on subsequent contracts in either a prime or subcontractor capacity.
(e) Release of information by firms or personnel participating in design or engineering to companies competing for prime contract.
(f) Prequalification standards or specifications appear designed to exclude otherwise qualified contractors or their productions.
(g) Requirements appear split up to allow for rotating bids, giving each contractor his or her "fair share."
(h) Requirements appear split up to meet small purchase requirements (i.e., $25,000) or to avoid higher levels of approval that would be otherwise required.
(i) Bid specifications or statement of work appear inconsistent with the items described in the general requirements.
(j) Specifications appear so vague that reasonable comparisons of estimate would be difficult.
(k) Specifications appear inconsistent with previous procurements of similar items of services.

G–3. During the Presolicitation Phase

(a) Sole source justifications appear unnecessary or poorly supported.
(b) Statements justifying sole source or negotiated procurements appear inadequate or incredible.
(c) Solicitation documents appear to contain unnecessary requirements which tend to restrict competition.
(d) Contractors or their representatives appear to have received advanced information related to the proposed procurement on a preferential basis.

G–4. During the Solicitation Phase

(a) Procurement appears to be processed so as to exclude or impede certain contractors.
(b) The time for submission of bids appears to be unnecessarily limited so that only those with advance information have adequate time to prepare bids or proposals.
(c) It appears that information concerning the procurement has been revealed only to certain contractors, without being revealed to all prospective competitors.
(d) Bidders conferences are conducted in a way that apparently invites bid rigging, price fixing, or other improper collusion between contractors.
(e) There is an apparent intentional failure to fairly publish notice of the solicitation.
(f) Solicitation appears vague as to the details such as time, place and manner, of submitting acceptable bids.
(g) There is evidence of improper communications or social contract between contractors and Government personnel.
(h) Controls over the number and destination of bid packages sent to interested bidders appear inadequate.
(i) Indications that Government personnel or their families may own stock or have some other financial interest in either a contractor or subcontractor.
(j) Indications that Government personnel are discussing possible employment for themselves or a family member with a contractor or subcontractor or indications that a proposal for future employment from a contractor or subcontractor to a Government employee or his or her family members has not been firmly rejected.
(k) Indications that any contractor has received special assistance in preparation of his or her bid or proposal.
(l) It appears that a contract is given an expressed or implied reference to a specific subcontractor.
(m) Failure to amend solicitation to reflect necessary changes or modifications.

G–5. During the Submission of Bids and Proposals

(a) Improper acceptance of a late bid.
(b) Documents, such as receipts, appear falsified to obtain acceptance of a late bid.
(c) Improperly attempting to change a bid after other bidders prices are known.
(d) Indications that mistakes have been deliberately planted in a bid to support correction after bid opening.
(e) Withdrawal by a low bidder who may later become a subcontractor to a higher bidder who gets the contract.
(f) Apparent collusion or bid rigging among the bidders.
(g) Bidders apparently revealing their prices to each other.
(h) Required contractor certifications appear falsified.
(i) Information concerning contractor's qualifications, finances, and capabilities appear falsified.

G–6. During the Evaluation of Bids and Proposals

(a) Deliberately losing or discarding bids of certain contractors.
(b) Improperly disqualifying the bids or proposals of certain contractors.
(c) Accepting apparently nonresponsive bids from preferred contractors.
(d) Unusual or unnecessary contacts between Government personnel and contractors during solicitation, evaluation, and negotiation.
(e) Any apparently unauthorized release of procurement information to a contractor or to non-Government personnel.
(f) Any apparent favoritism in the evaluation of the bid or proposal of a particular contractor.
(g) Apparent bias in the evaluation criteria or in the attitude or actions of the members of the evaluation panel.

Appendix H to Part 516—Format/Guidance for Preparation of the Remedies Plan

(Date of Plan)

Section I (Administrative Data):
A. Subject of Allegation.

B. Principal Investigative Agency.

C. Investigative Agency File Number.

D. Subject's Location.

E. Location Where Offense Took Place.

F. Responsible Action Commander.

G. Responsible MACOM.

H. Contract Administrative Data (If Applicable):
1. Contract Number.

2. Type of Contract.

3. Dollar Amount of Contract.

4. Period of Contract.

I. Principal Case Agent (Name and Telephone Number).

J. Civilian Prosecutor (If Applicable) (Name, Address, and Telephone Number).

K. Is Grand Jury Investigating This Matter? —— If So, Where is Grand Jury Located?

L. Audit Agency Involved (If Applicable).

Name and Telephone of Principal Auditor.

M. Suspense Date for Update of This Plan.

Section II (Summary of Allegations and Investigative Results to Date): (Provide sufficient detail for reviewers of the plan to evaluate the appropriateness of the planned remedies. If information is "close-hold" or if grand jury secrecy applies, so state).

Section III (Adverse Impact Statement): (Describe any adverse impact on the DA/DOD mission. Adverse impact is described in DOD Directive 7050.5, paragraph E.1.g. Identify impact as actual or potential. Describe the impact in terms of monetary loss, endangerment to personnel or property, mission readiness, etc. This information should be considered in formulating your remedies as described below and provided to prosecutors for their use in prosecution of the offenses.)

Section IV (Remedies Taken and/or Being Pursued):

A. Criminal Sanctions. (As a minimum, address the following: Are criminal sanctions appropriate? If no, which ones? If not, why not? Has the local U.S. Attorney or other civilian prosecutor been notified and briefed? What actions have been taken or are intended? If and when action is complete, describe action and final results of the action. Other pertinent comments should be included.)

B. Civil Remedies. (As a minimum, address the following: Which civil remedies are appropriate? Has the local U.S. Attorney or other civilian prosecutor been notified and briefed? How, when, where and by whom are the appropriate civil remedies implemented? If and when action is completed, describe action and final results. Other pertinent comments should be included.)

C. Contractual/Administrative Remedies. (As a minimum, address the following:

Are contractual and administrative remedies appropriate: If so, which ones?

If not, why? If contractual or administrative remedies are considered appropriate, describe how, when and by whom the remedies are implemented. If and when action is completed, describe action and results of the action.

Other pertinent comments should be included.

D. Restrictions on Remedies Action. (Comment as to why obvious remedies are not being pursued. For example, the U.S. Attorney requests suspension action held in abeyance pending criminal action.)

Section V (Miscellaneous Comments/ Information):

Section VI (Remedies Plan Participants):

Name	Grade	Organization	Telephone No.

Section VII (MACOM Coordination Comments):

Name	Grade	Office symbol	Telephone No.	Date

(Signature)
(Date)
MACOM Focal Point

Section VIII (Coordination/Comments):

Name	Grade	Office symbol	Telephone No.	Date

Appendix I to Part 516—Legal Representation

I–1. Overview

(a) DA employees or military members asked to provide information (testimonial or documentary) to OSC may obtain legal advice through the Labor Counselor from DA attorneys concerning their rights and obligations. This includes assistance at any interviews with OSC investigators. However, an attorney-client relationship will not be established unless the employee or military member:

(1) Is suspected or accused by the OSC of committing a prohibited personnel practice or other illegal or improper act; and

(2) Has been assigned counsel by the DA General Counsel.

(b) Any military member or employee who reasonably believes that he or she is suspected or has been accused by OSC of committing a prohibited personnel practice or other illegal or improper act may obtain legal representation from DA. The counsel assigned will be from another DOD component whenever a DA attorney is likely to face a conflict between the attorney's ethical obligation to the client and DA, or when the suspected or accused individual has requested representation from another DOD component. Outside legal counsel may be retained by DA on behalf of the member or employee under unusual circumstances and only with the personal approval of the DOD General Counsel.

(c) The DA General Counsel will determine whether a conflict is likely to occur if a DA attorney is assigned to represent a military member or civilian. If the DA General Counsel determines a conflict may occur, or if the suspected or accused employee has requested representation from another DOD component, the DA General Counsel will seek the assistance of another General Counsel in obtaining representation outside DA.

I–2. Requests for Representation

(a) To obtain legal representation, military members or civilian employees must:

(1) Submit a written request for legal representation through DAJA–LC to DA General Counsel, explaining the circumstances that justify legal representation. Copies of all process and pleadings served should accompany the request.

(2) Indicate whether private counsel, at personal expense, has been retained.

(3) Obtain written certification from their supervisor that:

(i) They were acting within the scope of official duties; and

(ii) DA has not initiated any adverse or disciplinary action against them for the conduct being investigated by the OSC

(b) Requests for DA legal representation must be approved by the DA General Counsel.

(c) The conditions of legal representation must be explained and accepted in writing by the member or employee.

I–3. Limitations on Representation

(a) DA will not provide legal representation with respect to a DA initiated disciplinary action against a civilian employee for committing or participating in a prohibited personnel practice or for engaging in illegal or improper conduct. This prohibition applies regardless of whether the participation or conduct is also the basis for the disciplinary action proposed by the OSC.

(b) In certain situations, counsel provided by DA may be limited to representing the individual only with respect to some of the pending matters, if other specific matters of

concern to the OSC or MSPB do not satisfy the requirements contained in this regulation.

I–4. Attorney-Client Relationship

(a) An attorney-client relationship will be established and continued between the suspected or accused individual and assigned DA counsel.

(b) In representing a DA employee or military member, the DA attorney designated as counsel will act as a vigorous advocate of the individual's legal interests before the OSC or MSPB. The attorney's professional responsibility to DA will be satisfied by fulfilling this responsibility to the employee or military member. Legal representation may be terminated only with the approval of the DA General Counsel and normally only on the basis of information not available at the time the attorney was assigned.

(c) The attorney-client relationship may be terminated if the assigned DA counsel determines, with the approval of the DA General Counsel, that:

(1) The military member or civilian employee was acting outside the scope of his or her official duties when engaging in the conduct that is the basis for the OSC investigation or charge; and

(2) Termination is not in violation of the rules of professional conduct applicable to the assigned counsel

(d) The DA attorney designated as counsel may request relief from the duties of representation or counseling without being required to furnish explanatory information that might compromise confidential communications between the client and the attorney.

I–5. Funding

This regulation authorizes cognizant DA officials to approve requests from military members or civilian employees for travel, per diem, witness appearances, or other departmental support necessary to ensure effective legal representation by the designated counsel.

I–6. Status

A military member's or civilian employee's participation in OSC investigations, MSPB hearings, and other related proceedings will be considered official departmental business for time and attendance requirements and similar purposes.

I–7 Advice to Witnesses

The following advice to military members and civilian employees questioned during the course of an OSC investigation may be appropriate in response to these frequent inquiries:

(a) A witness may decline to provide a "yes" or "no" answer in favor of a more qualified answer when this is necessary to ensure accuracy in responding to an OSC interviewer's question.

(b) Requests for clarification of both questions and answers are appropriate to avoid misinterpretation.

(c) Means to ensure verifications of an interview by OSC investigators are appropriate, whether or not the military member or civilian employee is accompanied by counsel. Tape recorders may only be used for this purpose when:

(1) The recorder is used in full view.

(2) All attendees are informed.

(3) The OSC investigator agrees to record the proceeding.

(d) Any errors that appear in a written summary of an interview prepared by the investigator should be corrected before the member or employee signs the statement. The military member or civilian employee is not required to sign any written summary that is not completely accurate. A military member or civilian employee may receive a copy of the summary as a condition of signing.

Appendix J to Part 516—Implementation of the Program Fraud Civil Remedies Act (PFCRA)

4 January 1989

Secretary of the Army, Washington

Memorandum for the General Counsel, Department of the Army

Subject: Implementation of the Program Fraud Civil Remedies Act (PFCRA)—Action Memorandum

Pursuant to any authority as Secretary of the Army, the duties and responsibilities under the PFCRA as Authority Head are delegated to the Army General Counsel.

The procedures prescribed in enclosure 2 of DOD Directive Number 5505.5, dated 30 August 1988, for the implementation of PFCRA will be followed by the Department of the Army and incorporated with this memorandum in Army Regulation 27–40, Litigation. You will also establish a working group consisting of representatives from the offices of the Assistant Secretary of the Army (Financial Management), Assistant Secretary of the Army (Research, Development and Acquisition), The Judge Advocate General and the U.S. Army Criminal Investigation Command to develop further necessary implementation procedures.

Further, the Commander, United States Army Legal Services Agency (USALSA), is designated the reviewing official within the meaning of the PFCRA. He has the authority to request the detail of presiding officials in Army cases, as specified in Office of Personnel Management regulations. He also is authorized to expend necessary funds to conduct the Army program.

Michael P. W. Stone.

Appendix K to Part 516—Designation of Officials for Procurement Fraud

Administrative Remedies

26 May 1989

Secretary of the Army, Washington

Memorandum for the Judge Advocate General

Subject: Designation of Officials for Procurement Fraud Administrative Remedies

Pursuant to my authority as Secretary of the Army, The Judge Advocate General (or his general officer designee) is designated as my Authorized Representative under Defense Federal Acquisition Regulation (FAR) Supplement, 48 subject 2079.4 (Debarment, Suspension, and Ineligibility). He has the authority to act on my behalf for the purposes of this subpart including acting as suspension and debarment official.

Further, The Assistant Judge Advocate General for Military Law is designated the reviewing official within the meaning of the Program Fraud Civil Remedies Act. He has the authority to request the detail of presiding officials in Army cases, as specified in Office of Personnel Management regulations. He also is authorized to expend necessary funds to conduct the Army program.

The designations set forth above are effective immediately, and supersede previous designations. Army Regulation 27–40, Litigation, and the Army FAR Supplement will be changed to reflect these designations. Appropriate action will be taken to change Defense FAR Supplement, 48 CFR subpart 209.4, to list the Army Authorized Representative.

Michael P. W. Stone.

Appendix L to Part 516—Department of Defense Directive 5505.5

DOD Directive 5505.5 is contained in 32 CFR part 277.

Appendix M to Part 516—Glossary

Abbreviations

AAFES
Army and Air Force Exchange Service
AFARS
Army Federal Acquisition Regulation Supplement
ASBCA
Armed Services Board of Contract Appeals
DA
Department of the Army
DFARS
Defense Federal Acquisition Regulation Supplement
DOD
Department of Defense
DOJ
Department of Justice
FAR
Federal Acquisition Regulation
FBI
Federal Bureau of Investigation
GAO
General Accounting Office
HQDA
Headquarters, Department of the Army
IG
Inspector General
JA
Judge advocate
MACOM
major command
MSPB
Merit Systems Protection Board
NAF
nonappropriated fund
OTJAG
Office of The Judge Advocate General
OSC
Office of Special Counsel
PFA
Procurement Fraud Advisor
PFD
Procurement Fraud Division
PFI
procurement fraud or irregularities
RJA
recovery judge advocate
SJA
staff judge advocate
TDY
temporary duty

TJAG
The Judge Advocate General
UCMJ
Uniform Code of Military Justice
USACIDC
U.S. Army Criminal Investigation Command
USALSA
U.S. Army Legal Services Agency
USARCS
U.S. Army Claims Service
USATDS
U.S. Army Trial Defense Service

Terms

Active duty. Full-time duty in the active military service of the United States. Includes: full-time training duty; annual training duty; active duty for training; attendance, while in the active military service, at a school designated as a Service school by law or by the Secretary of the military department concerned; and, attendance, while in the active military service, at advanced civil schooling and training with industry. It does not include full-time National Guard duty under title 32, United States Code.

Army activities. Activities of or under the control of the Army, one of its instrumentalities, or the Army National Guard, including activities for which the Army has been designated the administrative agency, and those designated activities located in an area in which the Army has been assigned single service claims responsibility by DOD directive.

Army property. Real or personal property of the United States or its instrumentalities and, it the United States is responsible therefore, real or personal property of a foreign government which is in the possession or control of the Army, one of its instrumentalities, or the Army National Guard, including property of an activity for which the Army has been designated the administrative agency, and property located in an area in which the Army has been assigned single service claims responsibility.

Centralized organization. That organization of a DOD component responsible for coordinating and monitoring of criminal, civil, contractual, and administrative remedies relating to contract fraud. For DOD components other than the Army, the Centralized organizations are the Office of Review and Oversight, Air Force Inspector General; the Office of the Inspector General, Department of the Navy; and the Office of General Counsel, Defense Logistics Agency.

Claim. The Government's right to recover money or property from any individual, partnership, association, corporation, governmental body, or other legal entity (foreign and domestic) except an instrumentality of the United States. A claim against several joint debtors or tortfeasors arising from a single transaction or incident will be considered one claim.

Claims officer. A commissioned officer, warrant officer, or qualified civilian employee designated by the responsible commander and trained or experienced in the conduct of investigations and the processing of claims.

Corruption. Practices that include, but are not limited to, solicitation, offer, payment, or acceptance of bribes or gratuities; kickbacks; conflicts of interest; or unauthorized disclosure of official information related to procurement matters.

Counsel for assistance. An attorney provided by DA at no expense to the military member or civilian employee, who will provide legal advice to the witness concerning the authority of OSC, the nature of an OSC interview and their individual rights and obligations. The counsel may accompany the witness to the interview and advise the witness during the interview. No attorney-client relationship is established in this procedure.

Counsel for representation. An attorney, provided by DA at no expense to the military member or civilian employee, who will act as the individual's lawyer in all contacts with the MSPB and the OSC during the pendency of the OSC investigation and any subsequent OSC initiated action before the MSPB. An attorney-client relationship will be established between the individual and counsel for representation.

Debarment. Administrative action taken by a debarring authority to exclude a contractor from Government contracting and Government-approved subcontracting for a specified period.

DOD criminal investigation organizations. Refers to the USACIDC; the Naval Investigative Service; the U.S. Air Force Office of Special Investigations; and the Defense Criminal Investigative Service, Office of the Inspector General, DOD.

Fraud. Any intentional deception of DOD (including attempts and conspiracies to effect such deception) for the purpose of inducing DOD action or reliance on that deception. Such practices include, but are not limited to, making false statements; submitting of false statements; submission of false claims; use of false weights or measures; submission of false testing certificates; adulterating or substituting materials; or conspiring to use any of these devices.

Improper or illegal conduct. A violation of any law, rule, or regulation in connection with Government misconduct; or, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Information exempt from release to the public. Those categories of information which may be withheld from the public under one or more provisions of law.

Judge advocate. An officer so designated (AR 27–1).

Legal adviser. A civilian attorney who is the principal legal adviser to the commander or operating head of any Army command or agency. Litigation in which the United States has an interest.

a. The United States or one of its agencies or instrumentalities has been, or probably will be, named as a party.

b. The suit is against a military member or civilian employee of the Army or one of its agencies or instrumentalities and arises out of the individual's performance of official duties.

c. The suit arises out of an Army contract, subcontract, or purchase order under the terms of which the United States may be required to reimburse the contractor for recoveries, fees, or costs of the litigation.

d. The suit involves administrative proceedings before Federal, State, municipal, or foreign tribunals or regulatory bodies that may have a financial impact upon the Army.

e. The suit may affect the operations of the Army or purport to require, limit, or interfere with official action by a military member or civilian employee.

f. The United States has a financial interest in the plaintiff's recovery.

g. Foreign litigation in which the United States is bound by treaty or agreement to ensure attendance by military personnel or civilian employees.

Medical care. Includes hospitalization, outpatient treatment, dental care, nursing service, drugs, and other adjuncts such as prostheses and medical appliances furnished by or at the expense of the United States.

Misdemeanor. An offense for which the maximum penalty does not exceed imprisonment for 1 year. Misdemeanors include those offenses categorized as petty offenses (18 U.S.C. 1).

Official information. All information of any kind, however stored, that is in the custody and control of DOD, relates to information in the custody and control of the Department, or was acquired by Department personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the U.S. Armed Forces.

Operating forces. Those forces whose primary missions are to participate in combat and the integral supporting elements thereof. Within DA, the operating forces consist of tactical units organized to conform to Tables of Organization & Equipment (TO & E).

Personnel action. These include:

a. Appointment.

b. Promotion.

c. Adverse action under 5 U.S.C. 7501 et seq. or other disciplinary or corrective action.

d. Detail, transfer, or reassignment.

e. Reinstatement.

f. Restoration.

g. Reemployment.

h. Performance evaluation under 5 U.S.C. 4301 et seq.

i. Decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action.

j. Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

Private litigation. Litigation other than that in which the United States has an interest.

Prohibited personnel practice. Action taken, or the failure to take action, by a person who has authority to take, direct others to take, recommend, or approve any personnel actions:

a. That discriminates for or against any employee or applicant for employment on the basis of race, color, religion, sex, national

origin, age, handicapping condition, marital status, or political affiliation, as prohibited by certain specified laws.

b. To solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests, or is under consideration for, any personnel action, unless the recommendation or statement is based on the personal knowledge or records of the person furnishing it, and consists of an evaluation of the work performance, ability, aptitude, or general qualifications of the individual, or an evaluation of the character, loyalty, or suitability of such individual.

c. To coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any emloyee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.

d. To deceive or willfully obstruct any person with respect to such person's right to compete for employment.

e. To influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

f. To grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

g. To appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 3110) of the employee, if the position is in the agency in which the employee is serving as a public official or over which the employee exercises jurisdiction or control as an official.

h. To take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for being a whistleblower, as defined below.

i. To take or fail to take a personnel action against an employee or applicant for employment as a reprisal for the exercise of any appeal right granted by law, rule, or regulation.

j. To discriminate for or against any employee or applicant for employment on the basis of conduct that does not adversely affect the performance of the employee or applicant or the performance of others.

k. To take or fail to take any other personnel action if the taking of, or failure to take, such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.

Prosecutive authorities. These include:

a. A U.S. Attorney;

b. A prosecuting attorney of a state or other political subdivision when the U.S. Attorney has declined to exercise jurisdiction over a particular case or class of cases; and

c. An SJA of a general court-martial convening authority considering taking action against a person subject to the UCMJ.

Recovery JA. A JA or legal adviser responsible for assertion and collection of claims in favor of the United States for property claims and medical expenses.

Significant case of fraud and corruption. A procurement fraud case involving an alleged loss of $50,000 or more and all corruption cases related to procurement that involve bribery, gratuities, or conflicts of interest and any procurement fraud case that has received or is expected to receive significant media coverage.

Staff judge advocate. An officer so designated (AR 27–1). The SJA of an installation, a command or agency reporting directly to HQDA, or of a major subordinate command of the U.S. Army Material Command, and the senior Army JA assigned to a joint or unified command.

Suspension. Administrative action taken by a suspending authority to temporarily exclude a contractor from Government contracting and Government-approved subcontracting.

Suspension and department authorities. Officials designated in DFARS, 48 CFR 20 9.470, as the authorized representative of the Secretary concerned.

Whistleblower. A present or former Federal employee or applicant for Federal employment who discloses information he or she reasonably believes evidences:

a. A violation of any law, rule, or regulation.

b. Mismanagement, a gross waste of funds, or an abuse of authority.

c. A substantial or specific danger to public health or safety. Such disclosure is protected from reprisal if it is not specifically prohibited by statute and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

[FR Doc. 90–5415 Filed 3–19–90; 8:45 am]

BILLING CODE 3710–08–M

federal register

Tuesday
March 20, 1990

Part III

Department of Education

Rehabilitation Services Administration; Special Projects and Demonstrations for Fiscal Year 1990; Notice

Budget Estimates

Part III

Department of Education

Rehabilitation Services Administration
Special Projects and Demonstrations for
Fiscal Year 1990 Notice

DEPARTMENT OF EDUCATION

Rehabilitation Services Administration; Special Projects and Demonstrations for Fiscal Year 1990

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority.

SUMMARY: The Secretary of Education proposes a funding priority for fiscal year 1990 for service activities to be supported under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps of the Rehabilitation Services Administration (RSA).

DATES: Comments must be received on or before April 19, 1990.

ADDRESSES: All comments concerning this proposed funding priority should be addressed to Wallace Babington, Office of Program Operations, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3033–A) Washington, DC 20202–2575.

FOR FURTHER INFORMATION CONTACT: Wallace Babington, Telephone (202) 732–1322 (voice) or (202) 732–2848 (TDD).

SUPPLEMENTARY INFORMATION: Grants under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps are authorized by title III, section 311(a)(1) of the Rehabilitation Act of 1973, as amended. The purpose of this program is to expand and otherwise improve rehabilitation services to individuals with the most severe handicaps.

Eligible Applicants

Under the Program of Special Projects and Demonstrations, awards are made to States and other public and private nonprofit agencies and organizations.

Proposed Priority

In accordance with the Educational Department General Administration Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary proposes to set funds aside and give an absolute preference to applications that respond to the proposed priority under the program described in this notice for fiscal year 1990; that is, the Secretary proposes to select for funding only those applications proposing projects that meet this priority. RSA invites public comment on the merits of the proposed priority, including suggested modifications to the proposed priority.

The final priority will be announced in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other departmental considerations. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received.

The sum of $888,000 is available for this purpose for FY 1990. Funds awarded under this priority will be available only during FY 1990. No funds have been requested for FY 1991, and the Secretary has no plans for further grant awards under this priority.

The purpose of this proposed priority is to solicit applications for one or more projects that will provide educational and vocational rehabilitation services, not otherwise adequately available in the geographic area proposed to be served, to maximize the vocational potential of low-functioning adults who are deaf, including those who are deaf and have secondary diabilities. The project must coordinate with and provide services through a consortium of institutions that works in collaboration with private and public non-profit agencies and organizations to address the postsecondary education, counseling, vocational training, work transition, supported employment, job placement, follow-up, and community outreach needs of low-functioning adults who are deaf.

Projects must have working relationships with existing educational and vocational programs for the adult deaf, such as the Regional Postsecondary Education Programs for the Deaf (RPEPD) supported by the Department of Education. Projects must coordinate with the Rehabilitation Research and Training Center on the Rehabilitation of Low-Functioning Deaf Individuals, and the results of the projects funded under this priority must be disseminated to the Research and Training Center. Each project must also establish relationships with potential employers from the public and private sector and have access to community-based resources serving the adult deaf (for example, clubs for persons who are deaf, groups providing special activities for persons who are deaf, and employment settings where there are deaf workers).

The staff for the project must be experienced in the delivery of services, such as vocational evaluation, peer counseling, personal adjustment, job coaching, community-based instruction, and placement, to deaf adults who are low-functioning. The staff must also be experienced in communicating with adult persons who are deaf and who have minimal language skills.

The project must involve individuals who are deaf and representatives of RPEPDs or other appropriate services programs for the deaf in the planning, implementation, operation, and evaluation of the project and dissemination of project results. The project must be capable of being replicated, in whole or in part, by other service providers. The project must provide technical assistance to facilities and agencies in areas such as outreach, using a coordinated consortium approach to the delivery of services, and on-site training and workshops. The technical assistance must be designed to facilitate the wide dissemination of practices and materials developed by the project and to facilitate the capacity of agencies and facilities to provide improved services to deaf adults who are low-functioning.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 3033–A, Mary E. Switzer Building, 330 C Street, SW., Washington, DC. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Authority: 29 U.S.C. 777a(a)(1)

(Catalog of Federal Domestic Assistance No. 84.128A, Rehabilitation Services Administration)

Dated: March 15, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–6304 Filed 3–19–90; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
March 20, 1990

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Comprehensive Improvement Assistance Program (CIAP); Notice of Fund Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-90-3016; FR-2754-N-01]

Comprehensive Improvement Assistance Program (CIAP)—Notice of Fund Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of fund availability.

SUMMARY: This Notice informs Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) of the amount of CIAP funds available during FY 1990. This Notice also provides instructions to PHAs and HUD Regional and Field Offices regarding the development and processing of applications for CIAP funding during FY 1990. These instructions supplement the procedures stated in the CIAP regulation, 24 CFR part 968 (as revised on December 21, 1989 at 54 FR 52686); CIAP Handbook 7485.1 REV–4, (PHAs); and Handbook 7440.3 REV. (IHAs). This Notice invites PHAs/IHAs to submit CIAP Applications by April 27, 1990.

APPLICATION DEADLINE: Applications must be received by close of business on April 27, 1990, or postmarked no later than April 27, 1990, at the HUD Field Office with jurisdiction over the PHA or IHA, Attention: Chief, Assisted Housing Management Branch (AHMB).

FOR FURTHER INFORMATION CONTACT: Thomas Sherman, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4204, Washington, DC 20410. Telephone (202) 755–5380. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

1. Background

This Notice of Funding Availability (NOFA) and invitation for applications announces the availability of fiscal year 1990 funding authority for the Comprehensive Improvement Assistance Program (CIAP) as provided in the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1990, Public Law 101–144, approved November 9, 1989.

While this funding round is to be carried out in conformity with the requirements set forth in 24 CFR part 968 (as revised at 54 FR 52686, December 21, 1989) and CIAP Handbook 7485.1 REV.–4, Notice PIH 90–4 (PHA) and IHA Handbook 7740.3—it is also subject to the additional specific requirements set forth in this NOFA. Deadline dates previously set forth in Notice PIH 90–4 (PHA) dealing with CIAP processing have been modified by this notice and, therefore, supercede these dates.

2. Fund Availability

CIAP Funds. The total amount of FY 1990 CIAP funds available under Section 14 of the U.S. Housing Act of 1937, as amended (Act), is $1,973,335,307 of budget authority (capital funds). Of that amount, $88,000 has been reserved for 1989 Resident Management purposes. Of the remaining $1,973,247,307, 97.3 percent, or $1,919,969,630, will be available for Public Housing and 2.7 percent, or $53,277,677, will be available for Indian Housing. Of the $1,919,969,630 available for Public Housing, $1,900,148,877 will be available for Regional assignment and $19,820,753 will be used for the following special needs:

Emergency Relief. Section 14(h) of the Act and the CIAP regulations at 24 CFR 968.210(h) require the Department to give first priority to funding housing developments (projects)[1] that have emergency conditions that pose an immediate threat to tenant life, health or safety or related to fire safety. Hurricane Hugo and the recent earthquake in the State of California resulted in emergency conditions for PHAs in Regions II, IV and IX. In order to correct those emergency conditions expeditiously, affected PHAs were given permission to use previously approved CIAP or other funds for the emergency work. The Department has determined that these costs should not be subtracted from the fund assignments for these Regions because of the high cost involved and because it would unfairly penalize unaffected PHAs in those Regions by reducing the amount of funds otherwise available to meet their modernization needs. As a result, the Department will make available $14,746,770 for emergency disaster relief to Regions II, IV and IX, outside of their fund assignment.

Lead-Based Paint (LBP) Abatement Demonstration. PHA participation in this Demonstration is mandated by section 566 of the Housing and Community Development (HCD) Act of 1987, as amended. It is estimated that the total cost for abatement and data analysis for the three PHAs selected to participate in the Demonstration is $4,102,000. The Department will make available this amount to Regions I, II, and VII, outside of their formula fund assignment for three PHAs who volunteered to participate in the demonstration.

LPB Indemnification. The FY 1990 Appropriations Act requires the Department to make available $1,000,000 to indemnify PHAs that participate in the LBP Abatement Demonstration and any person under contract with these PHAs. The Office of Management and Budget subtracted the sequestration from the appropriated funds, which resulted in $971,983 being available for indemnification. The Department will hold this amount in Headquarters until the funds are required to pay any claims.

Summary of activities	Budget authority
Indian Housing	$53,277,677
Public Housing	1,919,969,630
Total funds available	$1,973,247,307
Regional Office Assignment	$1,900,148,877
Emergency Relief	14,746,770
LBP Abatement Demonstration	4,102,000
LBP Indemnification	971,983
Total Funds Available for Public Housing	$1,919,969,630

3. Secretarial Initiatives

Consistent with the Secretary's initiatives, Regional Offices, Field Offices, and PHAs are strongly encouraged to explore ways in which the following initiatives may be carried out in all aspects of CIAP. These initiatives are addressed in CIAP Handbook 7485.1 REV–4 and are included in the technical review factors found in Chapter 3 of CIAP Handbook 7485.1 REV 4.

a. Restoration of vacant units to occupancy;

b. Resident participation in modernization to increase economic development;

c. Drug elimination;

d. Resident management and involvement;

e. Homeownership; and

f. Fair housing and equal opportunity.

4. Assignment of CIAP Funds to Regional Offices

In FY 1990, CIAP funds will be assigned to the HUD Regional Offices on the basis of a formula estimate of each Region's relative share of modernization need. The estimated shares of need used in this distribution formula reflect statistical relationships between need, as determined by

[1] Terms "project(s)" and "development(s)" are used interchangeably.

physical inspections in a sample of almost 1,000 housing developments, and widely available standardized indicators, such as housing development age and PHA/IHA size. This sample was collected as part of HUD-funded research on Public and Indian Housing modernization need.

Modernization need, reflected by the formula, is composed of the following three categories of need and does not include any "accrued" (or estimated future) need:

"FIX backlog", which are needed repairs or replacements to existing physical systems in housing developments;

"Mandatory ADDs backlog", which are items that must be added to housing developments in order to comply with local codes or meet HUD modernization standards; and

"Project-Specific ADDs backlog", which are capital improvements needed for long-term viability of a specific housing development.

The relative shares of modernization need between Public and Indian Housing are determined by the shares of FIX, Mandatory ADDs, and Project Specific ADDs need.

Assignment of CIAP Funds to Regional Offices-PHA's

The following table shows the distribution of CIAP funds assigned by headquarters to the Regional Offices as percentages of the toal $1,900,148,877 available:

Region	Percent of funds public housing
Boston	5.52
New York	28.14
Philadelphia	12.96
Atlanta	15.63
Chicago	17.89
Ft. Worth	7.44
Kansas City	2.79
Denver	1.07
San Francisco	6.56
Seattle	2.00

Percentage Assignment of Indian CIAP Funds to Regionals

The following table shows the distribution of funds assigned by headquarters to the offices that administer CIAP funds as percentages of the total $53,277,677 available:

Indian offices	Percent of funds
Chicago (Region V)	16.91
Oklahoma (Region VI)	28.40
Denver (Region VIII)	29.59
Phoenix (Region IX)	14.45
Seattle (Region X)	2.87
Anchorage (Region X)	7.78

5. Subassignment of CIAP Funds to Field Offices

Non-Troubled PHAs. In assigning funds to each Regional Office, Headquarters will designate an amount to be subassigned immediately to each Field Office based on the needs of the non-troubled PHAs under each Field Office's jurisdiction. Prior to actual assignment of funds by Headquarters, Regional Administrators were given the opportunity to review the amounts proposed to be assigned to the Field Offices and to recommend to Headquarters revisions of those amounts, based upon their knowledge of circumstances which they believe should alter the proposed formula estimation of need. As a result of that process, the percentages for the three offices in Ohio were changed as follows: Columbus Office from .25 percent to .43 percent, Cincinnati Office from 1.21 percent to 1.00 percent, and the Cleveland Office from 1.09 to 1.12 percent. The changes were made based on the Regional Administrator's demonstration of greater need for CIAP assistance in the Columbus and Cleveland Offices' jurisdictions. The total amount of CIAP funds remains the same for the State of Ohio, only the distribution was altered to reflect the accepted change. The Field Office Manager shall have authority to make CIAP funding decisions for the non-troubled PHAs in their jurisdiction. Should the Field Office not receive sufficient fundable applications to utilize its allocation, the Regional Administrator shall reallocate the balance of such funds in the same manner as that described for the troubled PHAs.

Troubled PHAs. In assigning funds to each Regional Office, Headquarters will designate an amount, based on the needs criteria described above, to be held in the Regional Office for the funding of large Troubled PHAs. The amounts designated for large troubled PHAs are based on the same factors used for assigning all CIAP funds, and in no way represent a predetermined approval level of funding. Funding decisions will be made on the basis of performance as evaluated by both the Field and Regional Offices. The Regional Administrator shall have authority to make CIAP funding decisions, taking into consideration recommendations from the Field Office Managers, for the large Troubled PHAs. After the funding decisions have been made, the Regional Office shall subassign the funds approved for the large Troubled PHAs to the appropriate Field Office to complete fund reservation. If, due to lack of progress under the Memorandum of Agreement,[2] lack of management or modernization capability, or other reasons, the Regional Office is unable to use all the funds assigned for the funding of large Troubled PHAs, the Regional Office shall take one of the following actions:

a. *Sufficient Funds Are Left Over.* Where sufficient funds are left over after funding the large Troubled PHAs, the Regional Office shall subassign the remaining funds to the Field Offices based on their relative shares of modernization need. In such case, the Field Office manager shall have funding decision authority in accordance with the instructions on double weighting in subparagraph (b)A. below.

b. *Insufficient Funds Are Left Over.* Where the funds left over after funding the large Troubled PHAs are insufficient to subassign to the Field Offices based on their relative shares of modernization need, the Regional Office shall request that Field Offices make funding recommendations, as follows:

(i) After the Field Office has determined which housing developments it will fund, the Field Office shall make a list of *unfunded, but still recommended developments* which have been ranked, within each processing group, using the CIAP Application Processing System (CAPS). At this point, rankings within each processing group will be based on giving double weight to the following three technical review factors: (1) PHA's modernization capability (up to 20 points); (2) PHA's management capability (up to 20 points); and (3) adequacy of PHA's maintenance systems, including preventive and routine maintenance (up to 20 points). The double weighting of points is designed to reward PHAs that are performing well. The Field Office shall forward its revised list of rankings within each processing group to the Regional Office.

(ii) The Regional Office shall merge all the Field Office rankings, as prepared in subparagraph (b)(i), into one consolidated Regional ranking, within each processing group. The Regional

[2] A Memorandum of Agreement (MOA) is defined as a binding contractual agreement entered into between the Department and a Troubled PHA which sets forth specified performance targets relating to improvements in various operational areas.

Administrator then shall fund the top-ranked housing developments in order of total score within processing group. After the funding decisions have been made, the Regional Office shall subassign the funds to the appropriate Field Office to complete fund reservation.

Subassignment of CIAP Funds to Field Offices—PHA's

The following table shows the distribution of CIAP funds subassigned to Field Offices as percentages of the total $1,900,148,877 available for Public housing.

Region	Field	Percent share
1	Troubled	1.89
1	Boston	1.54
1	Hartford	.88
1	Manchester	.59
1	Providence	.62
2	Troubled [3]	10.64
2	Buffalo	1.96
2	New York	12.56
2	Newark	2.98
3	Troubled	4.66
3	Baltimore	1.93
3	Philadelphia	1.73
3	Pittsburgh	2.66
3	Richmond	1.32
3	Washington	.18
3	Charleston	.48
4	Troubled	.73
4	Atlanta	3.64
4	Birmingham	2.59
4	Columbia	.74
4	Greensboro, NC	1.97
4	Jackson	.75
4	Jacksonville	1.13
4	Knoxville	.71
4	Louisville	1.88
4	Nashville	1.49
5	Troubled	8.74
5	Chicago	2.02
5	Columbus	.43
5	Detroit	.76
5	Indianapolis	1.04
5	Milwaukee	.88
5	Minneapolis	1.33
5	Cincinnati	1.00
5	Cleveland	1.12
5	Grand Rapids	.57
6	Troubled	1.33
6	Fort Worth	1.71
6	Little Rock	.70
6	New Orleans	.90
6	Oklahoma City	.71
6	San Antonio	1.27
6	Houston	.65
6	Albuquerque	.17
7	Kansas City	.80
7	Omaha	.48
7	St. Louis	1.33
7	Des Moines	.18
8	Denver	1.07
9	Troubled	2.07
9	Honolulu	.62
9	Los Angeles	1.10
9	San Francisco	1.74
9	Phoenix	.51
9	Sacramento	.52
10	Anchorage	.15
10	Portland	.54
10	Seattle	1.31

[3] The Department has announced in the FEDERAL REGISTER on Wednesday, January 31, 1990 (55 FR 3273) that the Caribbean Ofice is being transferred from the New York HUD Region jurisdiction to the Atlanta region for oversight and monitoring of Puerto Rico and the Virgin Islands. This will be effective as of May 1, 1990. However, it has been administratively determined that the CIAP program change will not become effective until October 1, 1990. Therefore, the two troubled housing authorities—Puerto Rico and the Virgin Islands funds are included in the Region 2 Troubled line. Since these two authorities make up the entire public housing workload for the Caribbean HUD Office, there is no separate line item for the Caribbean office.

Indian Field Offices. In assigning funds to the appropriate Regional Office, Headquarters will designate an amount to be subassigned to the Field Office of Indian Programs (OIP). The OIP Director shall have authority to make CIAP funding decisions.

6. Single Stage Application Process

a. In accordance with 24 CFR part 968 (as revised at 54 FR 52686, December 21, 1989), in FY 1990 the Department is condensing the CIAP Application process into a single stage. The specifics of this revision are included in chapter 3 of the CIAP Handbook 7485.1 Rev.–4.

b. The PHA shall develop the application in consultation with local officials and tenants/homebuyers at the project to be modernized, as set forth in 24 CFR 968.220 and 225. Before developing the application, the PHA shall consult with local government officials as to whether the proposed comprehensive, special purpose, or homeownership modernization is financially feasible and will result in long-term physical and social viability of the project.

c. *CIAP Application.* Within the established time frame, the PHA shall submit to the Field Office, Attention: Chief, Assisted Housing Management Branch (AHMB), the CIAP Application in accordance with chapter 3 of the CIAP Handbook 7485.1 Rev.–4 in an original and two copies (or any lesser number of copies as specified by the Field Office). The PHA also shall send a copy of the CIAP Application to the chief executive officer, as well as any other appropriate local officials. See chapter 5 of CIAP Handbook 7485.1 Rev.–4 for resident/homebuyer notification requirements.

d. *"Fast Tracking" Emergencies.* It is emphasized that emergency applications do not have to be processed within the normal processing time allowed for other applications. Where an immediate hazard must be addressed, PHA emergency applications may be submitted and processed at any time during the year when funds are available. Regional and Field Offices may "fast track" processing of these emergency requests so that fund reservation may occur as soon as possible.

7. Field Office Review of Application

a. A HUD eligibility review shall determine if the application meets the basic eligibility requirements set forth in chapter 3 of CIAP Handbook 7485.1 Rev.–4 and is eligible for processing or fund reservation. The following factors shall be taken into account.

PHA Modernization Capability. The PHA must have at least minimal modernization capability to carry out its proposed modernization.

Work Item Eligibility and Need. Based on the Field Office's knowledge of the project's conditions.

End of Initial Operating Period (EIOP). The project must be at least three years old from EIOP to be eligible for funding.

Status of Fiscal Audit. If award of contract for audit is overdue (more than 90 days) after the PHA's fiscal year end and initiation of an audit is within the PHA's control, processing shall be suspended until audit has been initiated.

Lack of Available Funding. Where the PHA has requested funding for more projects than realistically can be funded in the current FFY, the Field Office may process only a portion of the application which has a reasonable chance of being funded and is consistent with the PHA's priorities.

Lack of Approved Comprehensive Plan for Management (CPM). Where the PHA is required, but does not have an approved CPM, the Field Office shall suspend further processing.

b. *Processing Groups.* The Field Office shall batch the eligible projects into the following processing groups. A PHA proposing all types of modernization may have projects included in each group; the same project may be in more than one group or in the same group, but for different types of modernization. For batching purposes, the Field Office may extract emergency or special purpose work items from comprehensive modernization proposals.

Group 1. Projects having conditions that pose an immediate threat (*i.e.*, must be corrected within one year of funding approval) to resident health or safety. Funding is limited to correction of emergency conditions, including those related to fire safety, and may not be used for substantial rehabilitation. Emergency conditions include all lead-based paint testing and abatement of units housing children under seven years old with elevated blood lead levels. Group 1 includes emergency modernization and emergency work under homeownership modernization. Group 1 projects are not subject to the

viability review in chapter 3 of CIAP Handbook 7485.1 Rev.–4.

Group 2. Projects (1) having conditions which threaten resident health or safety *or* having a significant number (10 percent or more) of vacant or substandard units, and (2) located in PHAs which have demonstrated a capability of carrying out the proposed modernization activities under comprehensive, special purpose or homeownership modernization. Within Group 2, funding preference shall be given to:

Group 2A Projects. The following paragraphs numbered (1) through (5) discuss those developments eligible to be processed under Group 2A.

(1) *Nondiscrimination Funding Preference.* This funding preference is described extensively in Appendix 3 to Notice PIH 90–4 dated January 30, 1990.

(2) *Conversion to Homeownership Funding Preference.* PHAs, excluding IHAs, which request funds to either prepare an application for the sale of dwelling units under sections 5(h) or 21 of the Act, as amended, or prepare the application and comprehensively modernize the units, shall receive funding preference if they meet the eligibility requirements set forth in the immediately following paragraph (3).

(3) *Eligibility Requirements for Homeownership Conversion Funding.*

(i) If the development in which the sale units are located otherwise meets the criteria of Group 2 (*i.e.*, has conditions which threaten resident health or safety *or* has a significant number of vacant or substandard units *and* is located in a PHA which has modernization capability), the development is processed under Group 2A as CONV/HOME (Conversion to Homeownership). If the project does not meet the criteria of Group 2, the project is processed under Group 3A, CONV/HOME. If the PHA does not provide the information required in paragraph (ii), the proposed comprehensive modernizaton shall be processed under Group 2C or 3B, as appropriate. All other projects in Group 3 shall be processed under Group 3B for comprehensive, special purpose or homeownership modernization.

(ii) If the PHA is requesting funds for both preparation of the conversion to homeownership application and the comprehensive modernization of the development at the same time, the PHA shall include the following with its CIAP Application for comprehensive modernization: in the PHA Board Resolution, an identification of the development name/number and specific units proposed for homeownership; expressions of interest from residents (or city-wide resident council or other appropriate resident entity if the units proposed for homeownership are vacant); and a statement of the expected affordability of resident ownership, including the income level targeted for purchasing residents, the need, if any, for post-sale housing assistance under the section 8 program, and PHA experience with previous homeownership programs or familiarity with successful programs of other PHAs. At its option, the PHA may address the following additional items with its CIAP Application for comprehensive modernization, but is required to address such issues in its formal conversion to homeownership application: Selling price; any planned job training; and any economic development or supportive services for the residents of the targeted units.

(iii) *Approval of Conversion to Homeownership Application.* If funding for both preparation of the conversion to homeownership application and the comprehensive modernization is approved at the same time, HUD will allow funds to be drawn down only for the application preparation and the architectural/engineering fees until the conversion application is approved by Headquarters. At that time, the PHA may draw funds for the actual construction.

(4) *Expedited Sale of Existing Homeownership Units.* PHAs, excluding IHAs, shall receive funding preference for existing Turnkey III units where expedited sales to advance the timing of title transfer are planned if they meet the eligibility requirements set forth in paragraphs (i) and (ii), below.

(i) *Eligibility Requirements.* If the Turnkey III development in which the sale units are located otherwise meets the criteria of Group 2, the development is processed under Group 2A as HOME (Homeownership). If the Turnkey III development does not meet the criteria of Group 2, the development is processed under Group 3A, HOME. This funding preference does not expand the eligible work under homeownership modernization. If the PHA does not provide the information required in paragraph (ii) immediately below, the proposed homeownership modernization shall be processed under Group 2C or 3B as appropriate.

(ii) The PHA shall include the following in its CIAP application for homeownership modernization: in the PHA Board Resolution, identification of the Turnkey III development name/number and specific units proposed for expedited sale and a statement that the limited funding under homeownership modernization will expedite sales; expressions of interest from homebuyers (or city-wide homebuyer council or other appropriate entity if the units proposed for sale are vacant); and a statement of the expected affordability of resident ownership, including the income level targeted for purchasing homebuyers. At its option, the PHA may address the following additional items with its CIAP Application for homeownership modernization, but is required to address such issues in its subsequent detailed plan for expedited sale; use of CIAP funds and other specific activities, including time frames, to expedite sales: financing; homebuyer training, if necessary; and any required changes to Homebuyer Agreements.

Approval of Expedited Sales Plan. If funding for the homeownership modernization is approved under Group 2A or 3A, HUD will allow funds to be drawn down only for architectural/engineering fees until the PHA's detailed expedited sales plan is approved by Headquarters. At that time, the PHA may draw down funds for the actual construction.

Group 2B projects involving the subsequent stage of multi-stage comprehensive modernization, an amendment to single stage comprehensive modernization, or additional modernization after completion of comprehensive modernization.

Group 2C projects are all other projects meeting the basic criteria for *Group 2.*

Note. All projects which meet the basic criteria of Group 2 are considered for funding under Group 2, regardless of whether they have lead-base paint abatement needs. Group 2B projects are not subject to the viability review. Groups 2A and 2C are subject to the viability review as found in Chapter 3 at Handbook 7485.1 Rev.–4.

Group 3. All other projects not in Groups 1 and 2, located in PHAs which have demonstrated a capability of carrying out the proposed modernization activities under comprehensive, special purpose or homeownership modernization. Group 3 projects are subject to the viability review.

8. HUD Technical Review

(a) *Assessment of PHA's Management Capability.* As part of its technical review of the CIAP Application, the Field Office shall evaluate the PHA's management capability, including whether the PHA has managed its projects in a manner that appears to meet equal opportunity objectives. This assessment may be based on occupancy audits, engineering surveys, management reviews, etc., which are

currently available within the Field Office, as well as the Annual Performance Review.

(b) *Technical Review.* After batching, the Field Office shall review and rate each eligible project for each type of modernization within Groups 2 and 3 on the technical review factors, in accordance with the point range specified below, with one point being low.

Technical review factor	Point range
Extent and urgency of need, including lead-based paint abatement and physical accessibility needs	1–20
Extent of vacancies	1–10
PHA's modernization capability	1–10
PHA's management capability	1–10
Adequacy of PHA's maintenance systems, including preventive and routine maintenance	1–10
Degree of cost-savings	1–5
Degree of resident involvement in PHA operations	1–5
Degree of PHA activity in resident initiatives, including resident management, economic development activities on behalf of residents, and drug elimination efforts.	1–5
Degree of PHA-wide resident employment	1–5
Local government and resident/homebuyer support for proposed modernization	1–5
Total Maximum Score	85 points

(c) *Field Office Ranking and Recommendations.* After technical review, the Field Office shall prepare its recommendations for Joint Review, in accordance with chapter 3 of CIAP Handbook 7485.1 Rev.–4.

9. Joint Review Selections

Purpose. The purpose of the on-site Joint Review is to discuss the proposed modernization program, as set forth in the CIAP Application, and reach agreement on PHA needs and approach. The Joint Review shall be carried out in accordance with the requirements set forth in chapter 3 of CIAP Handbook 7485.1 Rev.–4.

(a) *Funding Decisions.* Procedures to be followed after Joint Review with respect to Field Office re-rating and re-ranking, Field Office funding decisions, Regional Office decisions, Regional Office notification to Field Offices and completion of the fund reservation process are set forth in chapter 3 of CIAP Handbook 7485.1 Rev.–4 and the annual CIAP processing instructions Notice PIH 90–4 (PHA) dated January 30, 1990.

(b) *Informing PHA/IHA of Funding Decisions.* The PHA/IHA applicant will be informed of HUD's funding decision by a Field Office Approach/Disapproval Letter in accordance with chapter 3 of CIAP Handbook 7485.1 Rev.–4.

10. Special Purpose Modernization

(a) *Rulemaking.* A final rule implementing a statutory change, which expanded the eligible categories of special purpose modernization work, was published on March 31, 1989 (53 FR 40903).

(b) *Funding Limitation.* In FY 1990, to ensure that more funds are available for comprehensive modernization, the Department will limit to 20 percent of the amount of each Office's assignment/subassignment that may be approved for four of the five categories of special purpose modernization. The four categories of special purpose modernization included in the 20 percent limitation are replacement and repair of major equipment, upgrading of security, increased accessibility, and cost-effective improvements to increase energy efficiency. The fifth category of special purpose modernization which is the reduction of the number of vacant and substandard units is not included in the 20 percent limitation.

11. Physical Accessibility and Other Special Provisions.

Further specific information with respect to Funding for Accessibility, Lead-Based Paint Requirements, Energy Conservation Measures, Additional Funds for Previously Approved Modernization, Comprehensive Plans for Modernization, Combined MROP/CIAP Funding and CIAP Nondiscrimination and Homeownership Funding Preferences is provided in the annual CIAP processing instructions Notice PIH 90–4 (PHA) issued by the General Deputy Assistant Secretary for Public and Indian Housing on January 30, 1990.

12. Schedule for FY 1990 CIAP Process

Steps	Completion
PHAs submit applications	4/27/90
FOs make Joint Review selections	5/18/90
FOs complete conducting Joint Reviews	7/13/90
FOs making funding decisions [4]	8/17/90
FOs reserve funds, notify Counsels, and begin Congressional notification	8/24/90
FOs complete Congressional notification and notify PHAs of final funding decisions	8/31/90
FOs execute ACC amendments	9/21/90
PHAs submit Project Implementation Schedules [5]	10/26/90

[4] Regional decisions on funding of large troubled PHAs and additional FO developments are to be accomplished by this deadline.

[5] 60 calendar days from date PHAs are notified of final funding decisions.

Findings and Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementating section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

The collection of information requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1989 and have been assigned OMB control number 2577–0044.

Federalism impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implication" within the meaning of the Order.

Family impact. The General Counsel, as the Designated Official for Executive Order 12606, the Family; has determined that the provisions of this NOFA does not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order.

(The Catalog of Federal Domestic Assistance Program number and title is 14.852.)

Authority: Sec. 14, United States Housing Act of 1937 (42 U.S.C. 14371); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 15, 1990.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 90–6340 Filed 3–19–90; 8:45 am]

BILLING CODE 4210–33–M

Reader Aids

Federal Register

Vol. 55, No. 54

Tuesday, March 20, 1990

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

7289-7470.....1
7471-7686.....2
7687-7878.....5
7879-8114.....6
8115-8438.....7
8439-8896.....8
8897-9092.....9
9093-9310.....12
9311-9406.....13
9407-9708.....14
9709-9866.....15
9867-10032.....16
10033-10222.....19
10223-10394.....20

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6102.....7467
6103.....7683
6104.....8439
6105.....8897
6106.....9311
6107.....9405
6108.....9865

Executive Orders:
12513 (Revoked by EO 12707).....9707
12670 (Superseded by EO 12706).....9313
12686 (Amended by EO 12705).....8113
12705.....8113
12706.....9313
12707.....9707

Administrative Orders:
Presidential Determinations:
No. 90-10 of Feb. 20, 1990.....8899
Memorandums:
Mar. 7, 1990.....10033

5 CFR

302.....9407
581.....10223
831.....9093
890.....9107

7 CFR

52.....9412
246.....9709
272.....8289
273.....8289
274.....8289
276.....8289
301.....9719
354.....7289
905.....8441
907.....7687, 8901, 9867
910.....7471, 8903, 9867
918.....7289
925.....9416
948.....8443
959.....7689
966.....7879
982.....8904
985.....8905
1421.....7690
1736.....8907
1772.....7867, 7880
1900.....9870
1945.....7471
1951.....9870
1955.....9870
1980.....7471

Proposed Rules:
322.....7499
810.....8956
907.....9453
908.....9453
946.....9460
959.....7717
979.....7903, 8146
981.....9457
1012.....7718
1032.....7904
1068.....8472
1475.....7905

8 CFR

214.....7881

9 CFR

78.....7882
92.....7883, 10030
97.....7289
309.....7472
310.....7472
317.....7289
318.....7294
381.....7289

Proposed Rules:
312.....7499
318.....7339
327.....8956
329.....7499
381.....7339, 7499, 8956

10 CFR

600.....9109
605.....10035

Proposed Rules:
50.....9137
430.....7719
708.....9326

12 CFR

5.....7692
510.....7694
563.....7299
567.....7475
600.....7884
611.....10042
612.....7884
614.....7884
615.....7884
618.....7884
960.....7479

Proposed Rules:
208.....8147
225.....8147
568.....10247
611.....9138

13 CFR

108.....9110
115.....10224

Proposed Rules:
108.....9139

14 CFR

27 7992
29 7992
39 ..... 7300, 7696, 7703, 8115–8125, 8370–8374, 8445, 8446, 8909, 8910, 9112, 9315, 10042–10048, 10226–10228
71 ..... 7301, 8448, 8911, 8912, 9082, 10030, 10232, 10233
73 8127
75 10234
91 9418
97 ..... 7704, 9316
99 8390
121 ..... 8054, 8364, 9824
129 8364
133 7992
135 ..... 8054, 8364
382 8008
1207 9250

Proposed Rules:

Ch. I 10071
13 ..... 7980, 7989, 9270
21 7724
25 7724
29 8474
39 ..... 7341, 7502, 7732, 8148, 8149, 8377–8384, 8474, 8961, 8962, 9140, 10071–10074
47 9270
61 9270
71 ..... 7342, 7868, 8151
73 ..... 7867, 8151, 10030
91 ..... 7414, 9270
93 9090
121 7414
125 7414
135 7414
183 9270
382 ..... 8076, 8078

15 CFR

775 10050
776 10051–10142
777 10051
799 ..... 7867, 10142

Proposed Rules:

400 9824

16 CFR

305 7302
460 10053

Proposed Rules:

307 9142

17 CFR

1 ..... 7884, 8127
30 7705
200 10234
270 7706

Proposed Rules:

401 7733

18 CFR

16 7490

Proposed Rules:

4 9894
16 9894
375 9894
380 9894

19 CFR

134 7303
171 10055
353 9046
355 9046

Proposed Rules:

177 10249

20 CFR

404 ..... 7306, 7313, 8449
416 ..... 7311, 7411, 8449
422 ..... 7313, 10030

Proposed Rules:

416 ..... 9332, 9824

21 CFR

5 ..... 9078, 9418
7 9078
10 9078
12 9078
13 9078
14 ..... 7315, 9078
15 9078
16 9078
20 9078
25 9078
168 8458
173 8912
175 10235
176 10236
177 8139
178 8913
179 9078
182 9826
184 10030
333 9721
338 9078
448 9721
455 9317
510 ..... 8459, 8461
520 ..... 8459, 8461
522 8461
524 8461
540 ..... 8459, 8461
555 8461
558 ..... 8459, 8461
801 7491
1308 ..... 8914, 9113, 9117

Proposed Rules:

173 8476
175 8476
176 8476
177 8476
178 8476
179 8476
180 8476
181 8476
182 9834

22 CFR

60 9722
61 9722
62 9722
63 9722
65 9722
171 9317

23 CFR

Proposed Rules:

172 7739

24 CFR

44 8462
201 8464
203 8464
234 8464
235 9723
791 9252
882 9252
885 9117

Proposed Rules:

90 9332

25 CFR

61 7492

26 CFR

1 ..... 7316, 7711, 7891, 8946, 9420–9426
301 ..... 9438, 10236
602 ..... 7891, 9438, 10236

Proposed Rules:

1 ..... 7343, 9461–9464, 9920

28 CFR

301 9296
513 9296

29 CFR

517 ..... 7450, 7967
1612 8140
1910 7967
2676 9724

Proposed Rules:

1910 ..... 8152, 10250

30 CFR

202 7317
203 7317
206 7317
740 9400

Proposed Rules:

75 9732
206 8964
250 8485
931 ..... 7919, 7920
935 9143

31 CFR

215 7494

32 CFR

64 9319
516 10350

Proposed Rules:

199 9921
838 9733

33 CFR

100 ..... 7711, 9120, 9725
334 19237

Proposed Rules:

100 9465
115 7744
117 ..... 8154, 9145, 9466
334 10253

34 CFR

245 7711
673 10237

36 CFR

217 7892
251 7892

Proposed Rules:

7 8487

38 CFR

3 ..... 8140, 8141

39 CFR

111 10060
3001 8142

40 CFR

35 10176
52 ..... 7712, 7713, 9121–9125, 9442, 9726, 9876, 9878, 10061, 10062
61 8292
141 8948
180 ..... 8142, 9467, 10218
185 10218
186 10218
260 8948
261 8948
271 ..... 7318, 7320, 7696, 9127, 9128, 9880
272 9880
300 ..... 8666, 9688
799 7322

Proposed Rules:

52 ..... 7503, 8489, 9146, 9923, 10076
180 9467
271 10076
300 7507
372 10254

41 CFR

101–17 8465
301–16 7327

42 CFR

57 10063
74 9538
405 9538
416 9538
440 9538
482 9538
483 9538
488 9538
493 9538

Proposed Rules:

72 7678
400 9740
410 9740
411 8491
413 9740
414 9740
417 9740
424 9740
440 10077
447 10077
466 9740
473 9740
483 10256
485 9740
489 9740
494 9740

43 CFR

Public Land Orders:

6765 8289
6770 7898

44 CFR

64 9882
65 8950
207 ..... 7328, 10030

Proposed Rules:

67 9923

45 CFR

305 8465
704 9884
707 10142
1351 7967

46 CFR

550.....10238
580.....10238
581.....10238

Proposed Rules:

10.....8155
515.....10259
525.....10259
530.....10259
560.....10259
572.....10259

47 CFR

0.....8951, 9444
1.....9727
13.....7898
15.....7494
22.....7899
73.....7330, 7332, 7495, 7498, 7714, 8468, 8952, 8953, 9322, 9323, 9445, 9446, 9886, 10243
80.....7898
87.....7332
94.....9727
97.....9323
300.....9324

Proposed Rules:

2.....8964
21.....7344
43.....7344
73.....7345, 7509, 7745, 7746, 9148-9150, 9340, 9468, 9929-9931, 10259, 10260
74.....7344
76.....7509
78.....7344
90.....8966
94.....7344
97.....9341

48 CFR

35.....7634
415.....7333
504.....8953
528.....7967
545.....8953
552.....8953, 9886
553.....8953
705.....8469
706.....8469
719.....8469
726.....8469
752.....8469
1846.....9446
1852.....9446

Proposed Rules:

44.....7870
52.....7870

49 CFR

Proposed Rules:

27.....8081
28.....9342
225.....9469
571.....7346, 7510, 8497

50 CFR

14.....9730
17.....9129, 9447
23.....7714
33.....7334
285.....10244
611.....8142, 9887
641.....8143
655.....9324
656.....7900, 9451
672.....7902, 9887
675.....7337, 7716, 8142, 8145, 8954, 9887, 10246

Proposed Rules:

17.....7746, 7920, 9150, 9472, 9741, 10083
20.....9618
227.....10260
251.....8157
641.....8158
658.....7747

LIST OF PUBLIC LAWS

Last List March 19, 1990

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2742/Pub. L. 101-254

Library Services and Construction Act Amendments of 1990. (Mar. 15, 1990; 104 Stat. 101; 13 pages) Price: $1.00

H.R. 4010/Pub. L. 101-255

To provide the Secretary of Agriculture authority regarding the sale of sterile screwworms. (Mar. 15, 1990; 104 Stat. 114; 2 pages) Price: $1.00

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

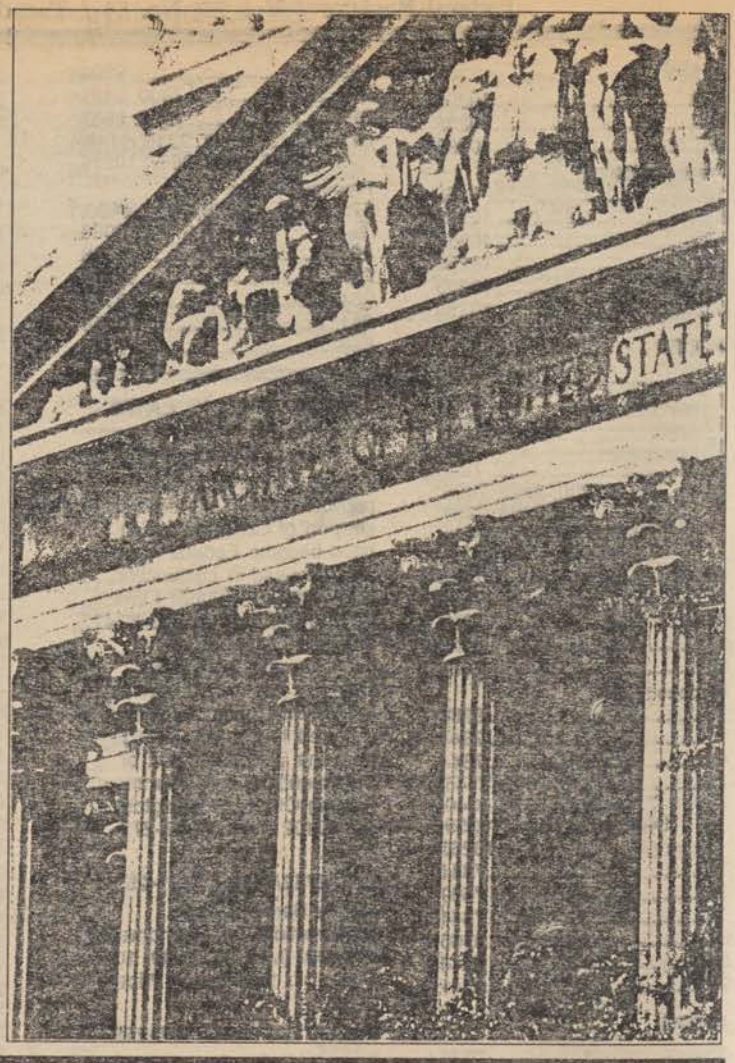
The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$21.00 per year

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$19.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers:
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.



Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*6483

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

☐ **YES,** please send me the following indicated subscriptions:

☐ LSA • List of CFR Sections Affected—one year as issued—$21.00 (LCS)

☐ Federal Register Index—one year as issued—$19.00 (FRSU)

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(REV. 10-1-88)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371